

ORIGINAL

ORIGINAL

(31)

2-6-02

SC

PETITIONERS RECORD IN SUPPORT OF ITS
TRAVERES TO RESPONSE TO PETITION FOR
HABEAS CORPUS

1-01-CV-1003

FILED
FEB 05 2002
PER <u>gls</u>
HARRISBURG, PA DEPUTY CLERK

5 -Y

ATTACHMENT --- GUN CONSPIRACY

(GOVERNMENT EXHIBITS NUMBER 182 THRU
252 WERE MARKED FOR IDENTIFICATION.)

A. THAT'S A COPY OF A INVOICE FROM DAVIDSONS IN GREENSBORO
AS A SELLING OF GUNS TO JOHNSON FIREARMS IN ANGIER, NORTH
CAROLINA.

Q. NOW, WHEN YOU SAY THIS IS A COPY, IS THIS AN ACTUAL
INVOICE OR A COMPUTER-GENERATED COPY?

A. THIS IS A COMPUTER-GENERATED COPY, WHICH REPRESENTS OUR
FIREARMS RECORD.

Q. NOW, DOES DAVIDSON KEEP THE RECORDS OF FIREARMS
TRANSACTIONS IN A COMPUTER BANK; IS THAT HOW THESE RECORDS ARE
KEPT?

A. THAT'S CORRECT. THE A.T.F. REQUIRES YOU TO KEEP A BOUND
BOOK, BUT IN TODAY'S VOLUME OF TRANSACTIONS YOU HAVE TO USE A
COMPUTER, SO WE HAVE APPROVAL FROM THE A.T.F. TO USE A
COMPUTER TO MAINTAIN THESE RECORDS.

Q. AND THAT'S BECAUSE OF THE INCREDIBLE VOLUME? IT WOULD BE
IMPOSSIBLE FOR YOU TO KEEP THESE BOUND BOOKS?

A. IT WOULD BE VERY DIFFICULT.

Q. NOW, CAN YOU RECOGNIZE THIS AS A DOCUMENT THAT YOU
RETRIEVED FROM THE COMPUTER-GENERATED RECORDS OF DAVIDSONS?

A. THAT'S A COPY THAT WOULD HAVE BEEN PRINTED FROM OUR
COMPUTER.

Q. FROM THE COMPUTER? AND HOW DO YOU KNOW THAT?

A. IT'S IN THE FORM AND SUBSTANCE THAT I RECOGNIZE.

1 Q. AND DOES THE COMPANY NAME APPEAR AT THE TOP?

2 A. OUR CORPORATE NAME IS AT THE TOP, THE CUSTOMER NAME AND
3 ADDRESS IS ON THE LEFT. THE SHIP TO ADDRESS IS ON THE RIGHT,
4 WHICH IN THIS PARTICULAR CASE IS THE SAME.

5 Q. NOW, ANYWHERE ON THIS RECORD DOES IT REFLECT WHAT DAY
6 THIS TRANSACTIONS TOOK PLACE? THE DATE OF THE TRANSACTION?

7 A. THE DATE IS 9/18/91.

8 Q. NOW, IF YOU WOULD, I NEED YOU TO FLIP THROUGH THIS BOOK
9 AND VERIFY THAT EACH ONE OF THE DOCUMENTS IN THIS BOOK -- AND
10 YOU CAN LOOK THROUGH ALL OF THEM AND TELL ME AFTER YOU LOOK
11 THROUGH ALL OF THESE DOCUMENTS, IF EACH ONE OF THESE REFLECT A
12 COMPUTER-GENERATED INVOICE FROM THE DAVIDSONS COMPANY.

13 A. (WITNESS PERUSES DOCUMENTS.) (PAUSE.) THESE ARE ALL OUR
14 INVOICES.

15 Q. WHEN YOU SAY "OUR," YOU MEAN FROM THE DAVIDSONS COMPANY?

16 A. FOR THE DAVIDSON SUPPLY COMPANY AS SALES TO FLETCHER
17 JOHNSON AS JOHNSON FIREARMS.

18 Q. WERE YOU REQUESTED TO PRODUCE ALL INVOICES FOR THE
19 TRANSACTIONS BETWEEN DAVIDSONS SUPPLY AND FLETCHER JOHNSON
20 FIREARMS?

21 A. I RECEIVED A SUBPOENA TO PRODUCE TRUE COPIES OF ALL
22 INVOICES FROM COMPUTER-GENERATED FILES RELATING TO ALL SALES
23 TO FLETCHER JOHNSON, ROUTE 4 BOX 195A, ANGIER, NORTH CAROLINA
24 27501.

25 Q. AND YOU THEN GENERATED A SEARCH OF THE COMPUTER RECORDS

1 WHICH RESULTED IN THOSE DOCUMENTS?

2 A. THAT'S CORRECT.

3 MS. HAMILTON: YOUR HONOR, I WOULD AT THIS TIME MOV
4 IN GOVERNMENT EXHIBITS 182 THROUGH 252.

5 MR. DAVIS: OBJECTION, YOUR HONOR, CAN WE APPROACH
6 THE BENCH ON THAT?

7 THE COURT: YES, SIR.

8 (BENCH CONFERENCE ON THE RECORD.)

9 MR. DAVIS: YOUR HONOR, SOME OF THOSE INVOICES
10 OCCURRED BEFORE JANUARY '92, WHICH IS OUTSIDE THE CONSPIRACY.
11 THE 182 WAS SEPTEMBER OF '91.

12 THE COURT: WELL, THAT MAY BE TRUE, BUT IF THEY
13 REFER TO A FIREARM THAT WAS DISTRIBUTED DURING THE COURSE OF
14 THE CONSPIRACY, I DON'T KNOW THE ANSWER TO THAT.

15 MS. HAMILTON: YOUR HONOR --

16 MR. COOPER: THEY HAVEN'T LINKED THAT UP THAT I'M
17 AWARE OF.

18 THE COURT: WELL, MY GUESS IS, THEY'RE GOING TO LINK
19 UP SOME FIREARMS TO THESE INVOICES. I DON'T KNOW.

20 MS. HAMILTON: YOUR HONOR, FLETCHER JOHNSON
21 TESTIFIED WHEN HE ACQUIRED HIS FIREARMS LICENSE, AND HE
22 TESTIFIED ABOUT HAVING BEGUN HIS OPERATION PRIOR TO JANUARY OF
23 '92. AND HE ALSO STATED THAT HE HAD NUMEROUS FIREARMS, SOLD
24 THEM FROM TIME TO TIME, AND THESE FIREARMS ARE ULTIMATELY
25 LINKED BACK UP INTO THE INVOICES AS HAVING BEEN FIREARMS

1 DISTRIBUTED BY THE CONSPIRACY. EVERY SINGLE INVOICE ISN'T
2 ULTIMATELY GOING TO BE AN INVOICE WHERE A FIREARM IS
3 DISTRIBUTED -- I MEAN, IS LINKED BACK UP. BUT WE NEED THE
4 ENTIRETY OF THE DOCUMENTS IN ORDER FOR THE AGENT TO GO THROUGH
5 THE INVOICES AND FIND EACH FIREARM.

6 THE COURT: WELL, HE'S NOT GOING TO LINK ALL OF
7 THEM, THOUGH; IS THAT CORRECT?

8 MS. HAMILTON: THAT'S CORRECT, YOUR HONOR, BUT THE
9 TOTAL NUMBER OF FIREARMS IS EXTREMELY RELEVANT, ESPECIALLY
10 WHEN THE DATES OF THE CONSPIRACY ARE COMPARED WITH THE INVOICE
11 NUMBERS AND THE VOLUME OF THE FIREARMS IS --

12 THE COURT: (INTERPOSING) WELL, I DON'T REALLY
13 UNDERSTAND THE OBJECTION. THE FIRST ONE THAT HE HAD THERE, I
14 DIDN'T MAKE A NOTE OF THE DATE. WHAT WAS IT?

15 MR. DAVIS: THE 18TH OF SEPTEMBER WAS THE FIRST,
16 NUMBER 182, THAT WAS THE DATE OF THAT INVOICE.

17 MS. HAMILTON: 9/18/91.

18 THE COURT: WELL, MR. DAVIS MAKES THE ARGUMENT THAT
19 THE CONSPIRACY STARTED IN JANUARY.

20 MS. HAMILTON: THE CONSPIRACY CHARGES ON OR ABOUT
21 JANUARY OF 1992.

22 THE COURT: ALL RIGHT, THE OBJECTION'S OVERRULED.

23 MR. DAVIS: NOTE THE OBJECTION.

24 (END OF BENCH CONFERENCE.)

25 MS. HAMILTON: I HAVE NO FURTHER QUESTIONS OF THE

5-W

ATTACHMENT --- INDICTMENT PAGES 1-12

FILED

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

JUL 6 '93

DAVID W. DANIEL, CLERK
U.S. DISTRICT COURT
E. DIST. N.C.

NO. 93-102-01-CR-5-F
NO. 93-102-02-CR-5-F
NO. 93-102-03-CR-5-F
NO. 93-102-04-CR-5-F
NO. 93-102-05-CR-5-F
NO. 93-102-06-CR-5-F
NO. 93-102-07-CR-5-F
NO. 93-102-08-CR-5-F
NO. 93-102-09-CR-5-F

UNITED STATES OF AMERICA

v.

I N D I C T M E N T

CLYDE ANDRE HENDRICKS
MELVIN ADAMS
ANTHONY B. HOLLEY
STANLEY LEACH
LENTON EARL JORDAN
FLETCHER JOHNSON
JOHN DOE,
a/k/a Raleek,
a/k/a Baldhead
TUVAL MCKOY
LORI ANNE PERRY HENDRICKS

The Grand Jury charges that:

COUNT 1

Beginning in or about January 1992, the exact date being unknown, and continuing up to and including June 17, 1993, within the Eastern District of North Carolina and elsewhere, CLYDE ANDRE HENDRICKS, MELVIN ADAMS, ANTHONY B. HOLLEY, STANLEY LEACH, LENTON EARL JORDAN, FLETCHER JOHNSON, JOHN DOE, a/k/a Raleek, a/k/a Baldhead, TUVAL MCKOY and LORI ANNE PERRY HENDRICKS, the defendants herein, did unlawfully, knowingly and intentionally combine, conspire, confederate and agree together with others known and

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USA, USPD, PYS, USM
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1 for 1 A/K/A

unknown to the grand jury, to commit the following offenses against the United States:

1. To knowingly, intentionally and unlawfully possess with intent to distribute a quantity of a mixture and substance containing a detectable amount of cocaine base, a Schedule II narcotic controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

2. To knowingly, intentionally and unlawfully distribute a quantity and mixture of a substance containing a detectable amount of cocaine base, a Schedule II narcotic controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

3. To knowingly, intentionally and unlawfully possess with intent to distribute a quantity of a mixture and substance containing a detectable amount of cocaine, a Schedule II narcotic controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

4. To knowingly, intentionally and unlawfully distribute a quantity of a mixture and substance containing a detectable amount of cocaine, a Schedule II narcotic controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

WAYS, MANNER AND MEANS TO ACCOMPLISH THE CONSPIRACY

The primary purpose of the conspiracy was to make as much money as possible through the distribution of cocaine, cocaine base and firearms, in the Eastern District of North Carolina. In order to accomplish the goals of the conspiracy the co-conspirators did commit and aid and abet in the commission of the following violations:

- a. possession and receiving firearms which had the manufacturers serial number removed, obliterated and altered and had, at any time, been shipped and transported in interstate commerce, in violation of Title 18, United States Code, Section 922(k);
- b. engaging in the business of dealing in firearms without a license, in violation of Title 18, United States Code, Section 922(a)(1)(A) and Section 924(a)(1)(D);
- c. using and carrying firearms during and in relation to a drug trafficking crime, in violation of Title 18, United States Code, Section 924(c);
- d. failing to maintain firearm records as required by law, in violation of Title 18, United States Code, Section 922(m);
- e. possession of firearms in and affecting commerce after having been convicted of a crime punishable by imprisonment for a term exceeding one year, in violation of Title 18, United States Code, Section 922(g);
- f. transferring firearms knowing that they will be used in a drug trafficking crime, in violation of Title 18, United States Code, Section 924(h);
- g. wire fraud, in violation of Title 18, United States Code, Sections 1342 and 2.
- h. possession with intent to distribute cocaine base, in violation of Title 21, United States Code, Section 841(a)(1);
- i. distribution of cocaine base, in violation of Title 21, United States Code, Section 841(a)(1);

j. possession with intent to distribute cocaine, in violation of Title 21, United States Code, Section 841(a)(1); and

k. distribution of cocaine, in violation of Title 21, United States Code, Section 841(a)(1).

The ways, manner and means by which this purpose was carried out included the following:

1. It was part of the conspiracy that the defendants and the unindicted co-conspirators played different roles and took upon themselves different tasks and participated in the affairs of the conspiracy through various criminal acts. The defendants made themselves and their services available at various times throughout the conspiracy and would participate in selective cocaine, cocaine base and firearm distribution ventures on an as needed basis. Some of the roles which the defendants and unindicted co-conspirators assumed and carried out including among others, organizer, supplier, distributor, courier and gun transporter. The main task of FLETCHER JOHNSON was to supply firearms to the conspiracy. CLYDE ANDRE HENDRICKS, MELVIN ADAMS, STANLEY LEACH, TUVAL MCKOY and JOHN DOE, a/k/a Raleek, a/k/a Baldhead, each had drug distribution operations in Raleigh, North Carolina and they acquired the firearms in order to perpetuate the existence of these drug distribution operations. The principal role of LENTON EARL JORDAN was that of a gun runner in that he would transport firearms for the conspiracy to Richmond, Virginia and Washington, D.C. JOHN DOE, a/k/a Raleek, a/k/a Baldhead, was a wholesale distributor of cocaine base and supplied wholesale quantities to CLYDE ANDRE

HENDRICKS. At all times material to the conspiracy, LENTON EARL JORDAN was a sworn law enforcement law officer with the North Carolina Central University Police Force and LORI ANNE PERRY HENDRICKS was a sworn law enforcement officer with the Shaw University Police Force.

2. It was further part of the conspiracy that the defendants and unindicted co-conspirators derived substantial money and other benefits from their unlawful activities.

3. It was further part of the conspiracy that the defendants and unindicted co-conspirators solicited, recruited and hired other individuals in the Raleigh, North Carolina area to receive cocaine, cocaine base and firearms.

4. It was further part of the conspiracy that the defendants and unindicted co-conspirators traveled in interstate commerce in order to facilitate the possession with intent to distribute cocaine base and the distribution of cocaine base as well as possession and distribution of firearms.

5. It was further part of the conspiracy that the defendants and unindicted co-conspirators caused to be distributed and distributed in the Eastern District of North Carolina and elsewhere, substantial quantities of cocaine base.

6. It was further part of the conspiracy that the defendants and unindicted co-conspirators did acquire and possess hundreds of firearms with altered and obliterated serial numbers in Raleigh, North Carolina in order to perpetuate their cocaine distribution activities in the Eastern District of North Carolina.

7. It was further part of the conspiracy that the defendants and unindicted co-conspirators cut and packaged cocaine base in quantities for redistribution and retail sale.

8. It was further part of the said conspiracy that each defendant would commit and aid and abet in the commission of the criminal offenses involving the knowing and intentional distribution and possession with intent to distribute controlled substance, namely cocaine and cocaine base, in violation of Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2.

OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the defendants and unindicted co-conspirators committed overt acts in the Eastern District of North Carolina and elsewhere, including but not limited to the following:

1. Beginning in or about August 1992 and continuing through June 1993, in the Eastern District of North Carolina, FLETCHER JOHNSON who was a licensed firearms dealer, supplied in excess of one thousand two hundred (1,200) handguns to STANLEY LEACH, TUVAL MCKOY, CLYDE ANDRE HENDRICKS, LORI ANNE PERRY HENDRICKS, JOHN DOE, a/k/a Raleek, a/k/a Baldhead and LENTON EARL JORDAN. JOHNSON failed to make or keep any records of these transactions as required by law.

2. In or about August 1992, in the Eastern District of North Carolina, FLETCHER JOHNSON introduced STANLEY LEACH to CLYDE ANDRE HENDRICKS in order to enable LEACH to obtain a new source of supply

for wholesale quantities of cocaine base. During this conversation, HENDRICKS and LEACH discussed weight and prices of cocaine base and exchanged telephone and pager numbers.

3. In or about September 1992, in the Eastern District of North Carolina, STANLEY LEACH "cooked" a quantity of cocaine into cocaine base, commonly known as crack, said cocaine base being for further distribution in the Eastern District of North Carolina.

4. In or about September 1992, in the Eastern District of North Carolina, STANLEY LEACH and FLETCHER JOHNSON did agree to alter the serial numbers of the firearms that they sold in order to make them more difficult to trace.

5. In or about October 1992, in the Eastern District of North Carolina, TUVAL MCKOY sold numerous handguns to an unindicted co-conspirator.

6. Beginning in the fall of 1992 and continuing through May 1993, LENTON EARL JORDAN and CLYDE ANDRE HENDRICKS made numerous trips from Raleigh, North Carolina to Washington, D.C. to deliver quantities of 15-20 firearms with altered and obliterated serial numbers to a co-conspirator, said firearms having been delivered to them by FLETCHER JOHNSON.

7. In or about the fall of 1992 through May of 1993, in Raleigh, North Carolina, within the Eastern District of North Carolina, LORI ANNE PERRY HENDRICKS did assist FLETCHER JOHNSON alter and obliterated serial numbers on approximately 20 handguns he was delivering to CLYDE ANDRE HENDRICKS.

8. On or about November 23, 1992, in the Eastern District of

North Carolina, FLETCHER JOHNSON sold four Mac 10 9mm handguns to JOHN DOE, a/k/a Raleek, a/k/a Baldhead.

9. In or about November 1992, in the Eastern District of North Carolina, TUVAl MCKOY distributed a quantity of cocaine base to an unindicted co-conspirator.

10. In or about December 1992, in the Eastern District of North Carolina, TUVAl MCKOY sold numerous handguns to an unindicted co-conspirator.

11. On or about December 18, 1992, in the Eastern District of North Carolina, FLETCHER JOHNSON sold approximately 12 Bryco .380 caliber handguns to JOHN DOE, a/k/a Raleek, a/k/a Baldhead.

12. In or about January 1993, in the Eastern District of North Carolina, TUVAl MCKOY sold numerous handguns to an unindicted co-conspirator.

13. In or about January 1993, in Raleigh, North Carolina, within the Eastern District of North Carolina, CLYDE ANDRE HENDRICKS distributed approximately one ounce of cocaine to FLETCHER JOHNSON. The cocaine was offered as payment for a delivery of firearms that had been previously delivered to HENDRICKS.

14. In or about March/April 1993, in the Eastern District of North Carolina, TUVAl MCKOY sold numerous handguns to an unindicted co-conspirator.

15. On or about May 1, 1993, in the Eastern District of North Carolina, FLETCHER JOHNSON delivered numerous handguns to CLYDE ANDRE HENDRICKS. All of these firearms had the serial numbers

altered and obliterated.

16. On or about May 1, 1993, in the Eastern District of North Carolina, FLETCHER JOHNSON delivered numerous handguns to TUVAL MCKOY. All of these firearms had the serial numbers altered and obliterated.

17. On or about May 5, 1993, in the Eastern District of North Carolina, FLETCHER JOHNSON delivered numerous handguns to STANLEY LEACH. All of these firearms had the serial numbers altered and obliterated.

18. On or about May 5, 1993, in the Eastern District of North Carolina, FLETCHER JOHNSON delivered numerous handguns to TUVAL MCKOY. All of these firearms had the serial numbers altered and obliterated.

19. On or about May 6, 1993, in the Eastern District of North Carolina, FLETCHER JOHNSON delivered numerous handguns to STANLEY LEACH. All of these firearms had the serial numbers altered and obliterated.

20. On or about May 7, 1993, in the Eastern District of North Carolina, FLETCHER JOHNSON delivered numerous handguns to CLYDE ANDRE HENDRICKS. All of these firearms had the serial numbers altered and obliterated.

21. On or about June 3, 1993, in Raleigh, North Carolina, within the Eastern District of North Carolina, at 7283 Shellburne Drive, CLYDE ANDRE HENDRICKS met with an unindicted co-conspirator. During this conversation, the defendant HENDRICKS ordered 27 Lorcin .380 caliber semi-automatic handguns and three Tec 9mm semi-

automatic handguns. During this conversation, HENDRICKS provided the unindicted co-conspirator with a sample of cocaine base.

22. On or about June 5, 1993, in Raleigh, North Carolina, within the Eastern District of North Carolina, MELVIN ADAMS possessed a quantity of cocaine base, said cocaine being for further distribution within the Eastern District of North Carolina.

23. On or about June 7, 1993, in Raleigh, North Carolina, within the Eastern District of North Carolina, MELVIN ADAMS contacted FLETCHER JOHNSON and during the subsequent conversation, ADAMS ordered two (2) .380 caliber semi-automatic handguns.

24. On or about June 7, 1993, in Raleigh, North Carolina, within the Eastern District of North Carolina, CLYDE ANDRE HENDRICKS spoke with FLETCHER JOHNSON and during the conversation, agreed to supply him with five ounces of cocaine base.

25. On or about June 7, 1993, in the Eastern District of North Carolina, FLETCHER JOHNSON and TUAL MCKOY spoke on the telephone. During this conversation, TUAL MCKOY indicated that he was ready to order firearms and he would contact JOHNSON with the amount.

26. On or about June 9, 1993, in Raleigh, North Carolina, within the Eastern District of North Carolina, ANTHONY B. HOLLEY and MELVIN ADAMS met with FLETCHER JOHNSON. During this meeting HOLLEY advised JOHNSON that he wanted to obtain sixty (60) .25 caliber handguns to take to New York to sell. ADAMS advised FLETCHER JOHNSON that he had eight (8) ounces of cocaine and was contemplating a trade for handguns. ADAMS and HOLLEY gave JOHNSON

\$260.00 for two .380 caliber handguns.

27. On or about June 9, 1993, in Raleigh, North Carolina, within the Eastern District of North Carolina, FLETCHER JOHNSON and ANTHONY B. HOLLEY spoke on the telephone. During this conversation, HOLLEY inquired as to whether JOHNSON had obtained the guns that he and ADAMS had ordered.

28. On or about June 9, 1993, in Raleigh, North Carolina, within the Eastern District of North Carolina, FLETCHER JOHNSON and CLYDE ANDRE HENDRICKS met at HENDRICKS' residence. During this meeting, CLYDE ANDRE HENDRICKS gave JOHNSON a quantity of cocaine base, commonly known as crack. CLYDE ANDRE HENDRICKS advised that if JOHNSON needed more he could obtain it later that night. HENDRICKS placed a gun order with JOHNSON and gave him \$3,860.00 for the guns.

29. On or about June 10, 1993, in Raleigh, North Carolina, in the Eastern District of North Carolina, CLYDE ANDRE HENDRICKS and LORI ANNE PERRY HENDRICKS did possess with intent to distribute a quantity of cocaine base.

30. On or about June 10, 1993, in Raleigh, North Carolina, within the Eastern District of North Carolina, STANLEY LEACH distributed a quantity of cocaine base, commonly known as crack, to an unindicted co-conspirator.

31. On or about June 10, 1993, in Raleigh, North Carolina, within the Eastern District of North Carolina, FLETCHER JOHNSON and MELVIN ADAMS spoke on the telephone. During this conversation ADAMS discussed trading .380 caliber handguns for cocaine base.

32. On or about June 11, 1993, in Raleigh, North Carolina, within the Eastern District of North Carolina, FLETCHER JOHNSON and MELVIN ADAMS spoke on the telephone. During this conversation, ADAMS discussed trading .380 caliber and Tec 9mm handguns for cocaine base.

33. On or about June 11, 1993, in Raleigh, North Carolina, within the Eastern District of North Carolina, CLYDE ANDRE HENDRICKS and LORI ANNE PERRY HENDRICKS possessed with intent to distribute approximately 60 grams of cocaine base, commonly known as crack.

All in violation of Title 21, United States Code, Section 846.

FORFEITURES WITH RESPECT TO COUNT 1

Pursuant to Title 21, United States Code, Section 853(a), the defendants shall forfeit to the United States of America any and all properties constituting, or derived from, proceeds the defendant obtained, directly or indirectly, as a result of a conspiracy and any properties used or intended to be used by the defendants in any manner or part, to commit, or to facilitate the commission of such violation. These assets include, but are not limited to, the following:

1. Any and all interest of CLYDE ANDRE HENDRICKS and LORI ANNE PERRY HENDRICKS in a parcel of real estate including residence, appurtenances, and improvements located at 7283 Shellburne Drive, Raleigh, North Carolina.

2. Any and all interest of FLETCHER JOHNSON in a parcel of real estate including residence, business, appurtenances, and

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ATTACHMENT --- MOTION TO AMEND

ORDER ALLOWING MOTION

FILED

UNITED STATES DISTRICT COURT SEP 9 '93
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION DAVID W. DANIEL, CLERK

U.S. DISTRICT COURT
E. DIST. NO. CAR.

NO. 93-102-01-CR-5-F
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NO. 93-102-05-CR-5-F
NO. 93-102-06-CR-5-F
NO. 93-102-07-CR-5-F
NO. 93-102-08-CR-5-F
NO. 93-102-09-CR-5-F

UNITED STATES OF AMERICA :

v. :

MOTION TO AMEND INDICTMENT

CLYDE ANDRE HENDRICKS :

MELVIN ADAMS :

ANTHONY B. HOLLEY :

STANLEY LEACH :

LENTON EARL JORDAN :

FLETCHER JOHNSON :

JOHN DOE, :

a/k/a Raleek, :

a/k/a Baldhead :

TUVAL MCKOY :

LORI ANNE PERRY HENDRICKS :

The United States of America, by and through the United States Attorney for the Eastern District of North Carolina, hereby moves the Court to amend Counts 18 through 78 of the indictment as follows:

On page 22 of the indictment the statutory citation is incorrectly cited as a violation of Title 18, United States Code, Section 1342 and 2. The correct citation for the wire fraud offense set forth in Counts 18 through 78 should be Title 18, United States Code, Sections 1343 and 2.

The error in the citation was inadvertent and correcting the error will not prejudice the defendants in any way. Counts 18

4.


through 78 clearly set forth a wire fraud offense and the error in the citation has not misled the defendants. An indictment may be amended without resubmission to the grand jury where the amendment is a matter of form rather than substance and the change does not prejudice the accused. Russell v. United States, 369 U.S. 749 (1962). Amending the statutory miscitation in Counts 18 through 78 is not a substantive change to the indictment. See United States v. Garner, 529 F.2d 962, 966 (6th Cir. 1976)(if the indictment charges acts that are illegal under an existing statute, then the indictment is not invalidated because it cited the wrong statute).

Federal Rule of Criminal Procedure 7(c)(3) provides that "[e]rror in the citation or its omission shall not be ground for dismissal of the indictment . . . if the error or omission did not mislead the defendant to his prejudice." The defendants were fully informed of the wire fraud charge contained in Counts 18 through 78 and therefore have not been prejudiced by the erroneous statutory citation.

Based on the foregoing, the United States respectfully requests that page 22 of the indictment be amended to read: "All in violation of Title 18, United States Code, Sections 1343 and 2."

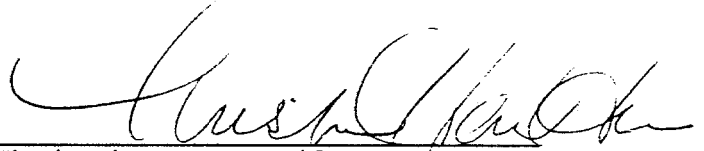
Respectfully submitted, this 9 day of September, 1993.

JAMES R. DEDRICK
United States Attorney


By: Christine B. Hamilton
Assistant United States Attorney
Criminal Division

Certificate of Service

This is to certify that I have this 9th day of September, 1993, served a copy of the foregoing Government's Motion to Amend Indictment upon the defendants in this action by depositing a copy of the same in the United States mail in a postpaid envelope addressed as follows:



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Orig

FILED

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

SEP 13 1993

DAVID W. DANIEL, CLERK
U. S. DISTRICT COURT
E. DIST. NO. CAR.

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UNITED STATES OF AMERICA

v.

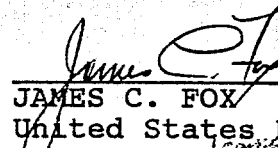
O R D E R

CLYDE ANDRE HENDRICKS
MELVIN ADAMS
ANTHONY B. HOLLEY
STANLEY LEACH
LENTON EARL JORDAN
FLETCHER JOHNSON
JOHN DOE,
 a/k/a Raleek,
 a/k/a Baldhead
TUVAL MCKOY
LORI ANNE PERRY HENDRICKS

The Government's motion to amend the Indictment herein
to correct a technical error is ALLOWED.

SO ORDERED.

This 10th day of September, 1993.


JAMES C. FOX
United States District Judge

lc: USA
Counsel
CR 03 # 52
Pg # 144

Identify the following other United States
courts of the district
David W. Daniel, Clerk
United States District Court
Eastern District of North Carolina
W. Patterson 5.

1-W

ATTACHMENT --- JOHN DOE DOCKET SHEET

DATE	DOCUMENT NO.	MASTER DOCKET - MULTIPLE DEFENDANT CASE PROCEEDINGS DOCKET FOR SINGLE DEFENDANT	PAGE	OF	VI EXCLUDABLE DELAY	Start Date End Date	Li Code	Total Days
	93-102-07-CR-5-F							
		(OPTIONAL) Show last names of defendants V. PROCEEDINGS John Doe						
		CASE ASSIGNE TO JUDGES FOX AND DIXON						
-93	1	INDICTMENT:: cc: USA, USPO, PTS, USM, J. Fox, J. Dixon, counter, calendar file.						
-93	X	MEMORANDUM:: requesting issuance of arrest warrant. Detention is requested and returnable before USMJ						
-93	X	WARRANT FOR ARREST:: issued original and one to USM w/ cc of indictment & cc: warrant to USA,			WSC			
93	4.	MOTION TO AMEND INDICTMENT filed by Govt - lc: J. Fox			vp			
3/93	5.	ORDER - govt's motion to amend the Indictment herein to correct a technical error is ALLOWED (Fox) - lc: USA, counsel - USPO, CR OB #52 pg # 144			vp			
/93	--	I.A. in Ral before USMJ Denson - Recorded - Deft present w/o counsel - Govt moves for deten - Advised of charges, max punish and rights - Deft requested court appted counsel			vp			
	6.	ORDER OF TEMPORARY DETENTION PENDING HEARING PURSUANT TO BAIL REFORM ACT - deten hrg is set for 9/27/93 at 3:30 in Ral before USMJ Denson - lc: Denson, USA, USM, PTS, FPD			vp			
	7.	ORDER appting court assigned counsel (Denson) - lc: USA, PTS, FPD w/file			vp			
/93	--	PRETRIAL SCHEDULING REPORT TO DIXON			vp			
	-	DETENTION HEARING in Ral before USMJ Denson - Recorded - Deft present w/counsel - Govt presented evidence thru sworn testimony - Deft is detained			vp			
/93	8.	ORDER OF PRETRIAL DETENTION - deft has not rebutted the presumptions and accordingly HE IS ORDERED DETAINED pending trial (Denson) - lc: USA, USM, PTS, Atty Aguirre			vp			
7/93	9.	NOTICE OF APPEARANCE filed by Bridgett Britt Aguirre - lc: USA USM, PTS, USPO, Judge Fox, Judge Dixon			vp			
9/93	10.	PRETRIAL SCHEDULING ORDER - discovery - 10/14/93 motions - 10/25/93 responses - 11/4/93 (Dixon, M/J) lc: USA, MsAquirre and Judge Fox (ent. 9/29/93) sr						
93	11	ORDER - continued to 11/22/93 from 10/25 - due to appt. of counsel in co-deft. -08's case - excludabel u/ 18:3161(h) - no further delays - (Fox, J) Cr. Ob#53, P. 17 lc: USA, USPO, PTS, USM, Ms. Aguirre and M/J Dixon (ent. 10/7/93)				10/25/93 11/22/93		
/93	12.	REQUEST FOR DISCOVERY by Deft. - w/cs. - lc: M/J Dixon			sr			
/93	13.	MOTION TO WITHDRAW by Atty. Aguirre w/cs. - lc: Judge Fox w/ prop. order.				10/19/93		
'93	--	RETURN ON WARRANT FOR ARREST - arrest 9/24/93 - Wm. McQueen, ATF			sr			
2/93	14.	ORDER - m/by Ms. Aguirre to w/draw is allowed - FPD to appt. substitutte counsel immediately - so counsl will have 30 days to prepare for trial on 11/22 (Fox,J) Cr. OR#53, P. 105 lc: FPD on 10/21 - lc: Mrs. Aguirre, Dixon, USPO, USA on 10/22 (ent. 10/22/93)			sr			
-93	15	AFFIDAVIT AND MOTION FOR HABEAS CORPUS AD TESTIFICANDUM FOR IRISH ROBERTSON FOSTER w/ ORDER:: (Denson) 5 cc USA, OB. 53 pg. 108			wsc			

Back Page Em.

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

U.S. vs

DOE, John a/k/a Raleek, a/k/a "Baldhead"

AO 256A

Yr. Docket No.

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DE		
		(a)	(b)	(c)
1/3/93	ISSUED NOTICE TO APPEAR - set for arrgn & trial on Monday 11/22/93 at 9 A.M. in Wilm. - Crtrr.No. 1 - Before Judge Fox - lc: USA and Mr. cooper		sr	
11-12-93	16. NOTICE OF APPEARANCE:: by Robert L. Cooper cc:USA, USPO, PTS, USM, J.FOX & Dixon	wsc		
11-12-93	17 MOTION FOR BILL OF PARTICULARS:: by deft. w/ c.s. cc: J. Fox	11-12-93		
11-12-93	18 MOTION FOR CONTINUANC:: by deft. w/ c.s. cc: J.Fox	11-12-93		
11-12-93	19 MOTION TO SUPPRESS PRETRIAL IDENTIFICATION AND TO PREVENT IN COURT IDENTIFICATION:: by deft. w/ c.s. cc: J.Fox	11-12-93		
11-12-93	20 REQUEST FOR NOTICE OF GOVERNMENT INTENT TO PRESENT EVIDENCE CONSISTENT W/ RULE 404(b): w/ c.s. cc: J. FOX	11-12-93		
11-12-93	21 MOTION FOR NOTICE BY THE GOVERNMENT OF INTENTION TO USE EVIDENCE ARGUABLE SUBJECT TO SUPPRESSION AND MEMORANDUM IN SUPPORT THEREOF:: by deft. w/ c.s. cc: J. Fox	11-12-93		
11-12-93	22 MOTION TO COMPEL IMMEDIATE DISCLOSURE OF EXISTENCE OF PROMISES OF IMMUNITY, LENIENCY, OR PREFERENTIAL TREATMENT AND INCORPORATED MEMORANDUM OF LAW:: by deft. w/ c.s. cc: J.Fox	11-12-93		
11-12-93	23 MOTION FOR ADDITIONAL PEREMPTORY CHALLENGES:: by deft. w/ c.s. cc: J. Fox	11-12-93		
11-12-93	24 MOTION TO EXCLUDE WITNESS:: by deft. w/ c.s. cc: J.Fox	11-12-93		
11-12-93	25 MEMORANDUM IN SUPPORT OF MOTION TO SUPPRESS: by deft. w/ c.s. cc: J.Fox	11-12-93		
11-12-93	26. CERTIFICATE OF SERVICE:: for derft. motions filed on 11-12-93.	wsc		
11/16/93	Atty. requested cy of transcript of detention hearing - needs by Friday, 11/19/93 - Tape given to Joyce Todd for transcribing.	sr		
11/17/93	27. EX PARTE MOTIN FOR FUNDS TO HIRE AN INVESTIGATOR by deft. lc: Jude Fox - adv. re: CJA 21.	sr	11/17/93	11-18-93
11/17/93	28 GOVERNMENT'S RESPONSE TO DEFENDANT'S MOTION TO SUPPRESS PRETRIAL AND IN COURT IDENTIFICATION w/cs - lc: Judge Fox	sr		
	29. GOVERNMENT'S RESPOSNE TO DEFENDANT'S PRETRIAL MOTIONS w/cs lc: Judge Fox	sr		
11/18/93	30. ORDER - govern. has respionses to ms. regarding notice, Brady material and sequestration of witnesses - therefore they do not need to be addressed - court will address m/ add. peremptory challenges at trial - m/bill of aprticulars, for continuance and to suppress are denied as untimely, lading merit - m/to hare an investigator is denied as untimely. (Fox, J) Cr. OB#53, P. 166 - lc: USA and Mr. Cooper (ent. 11/18/93)	sr		
11/18/93	-- TRANSCRIPT - Detention Hearing - 9/27/93 - Raleigh before Judge Denson - Carol Williams transcribed the Tape.	sr		
11/19/93	31. GOVERNMENT'S PROPOSED JURY INSTRUCTIONS w/cs. - lc: judge Fox.	sr		

B.P.

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

DOE, John

93-102-07-

AO 256A

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
	(Document No.)				
11/19/93	32. GOVERNMENT'S MOTION TO AMEND INDICTMENT - moves to identify John Doe as Allen Morsley, a/k/a Raleek, a/k/a Baldhead. w/cs. - lc: Judge Fox.		sr		
	33. GOVERNMENT'S PROPOSED QUESTIONS OF VOIR DIRE w/cs. lc: Judge Fox		sr		
11/22/93	-- Wilm. - Judge Fox - Talley Taylor Ct. Reporter Deft. sworn - Atty moves to w/draw - denied - deft. questioned re: attorney and name - M/Govern. allowed - deft's name is Allen Morsley a/k/a Raleek and Baldhead - Deft. to adv. court by jury selection if he wishes to proceed pro se or w/Mr. Cooper Arraigned - Not guilty - jury selection set for 11/24/93				
	34. DEFENDANT'S REQUEST FOR VOIR DIRE - lc: Judge Fox	sr			
	35. APPLICATION FOR COURT ORDER TO REQUIRE TESTIMONY - of Ellison Moore - lc: Judge Fox				
	36 ORDER - requiring Ellison Moore to testify. (Fox, J) Cr. OB# P. - lc: USA and Mr. Cooper (ent. 11/22/93)				sr
11/24/93	-- Wilm. - Judge Fox - James Palmer Ct Reporter Deft. admitted he is Allen Morsley and will keep Mr. Cooper as his attorney - Atty m/to withdraw - denied. J. Selection begin - continued until 11/29/93 to complete selection of alternates - J.T. to begin on 11/29/93 at 9 A.M.				
11/29/93	-- Wilm. - Judge Fox - Talley Taylor Ct. Reporter J. Selection completed - Jury impaneled Evid. began for the Govern.				
1/30/93	-- Wilm. - Judge Fox - Talley Taylor Ct. Reporter Evid. cont'd for the Govern.				
2/1/93	-- Wilm. - Judge Fox - Talley Taylor Ct. Reporter Evid. cont'd for the Govern.				
2/2/93	-- Wilm. - Judge Fox - Talley Taylor Ct. Reporter Evid. cont'd for the Govern.				sr
2/2/93	37. ORDER returning exhs. to Det. Ray Moss - Raleigh Police Dept. re: guns (Fox, J) - lc: USA and Det. Moss.		sr		
	38. ORDER - returning exhs to Det. Ray Moss - Raleigh Police Dept. re: cocaine (Fox,J) - lc: USA and Det. Moss.		sr		
*11/29/93	-TRANSCRIPT - Vol 1 - excerpts of jury selection before Judge Fox - 11/24/93 - Wilm. - James PALMER Ct. Reporter				
2/3/93	-- Wilm. - Judge Fox - Talley Taylor Ct. Reporter Ev. cont'd for Govern - Govern. rests - R. 29 - denied. Charge Conference - closing arguments - charge to jury				
	39 JURY VERDICT - Guilty to Cts. 1,17,18,37,44,80,81,95 lc: USA,USPO, PTS, USM, Mr. Cooper In Custody - SEN> 3/7/94 - Wilm. - 9 A.M.				
	-- Exh. list in file for co-deft 02 - (1 box w/chart in exh. room - no exhs. for defts. except two attached to exh. list for record only - not adm.)		sr		
1/1/94	ISSUED NOTICE TO APPEAR - set for sen. on 3/8/94 at 9 A.M. in Wilm. before Judge Fox - lc: USA and Mr. Cooper	sr			

3rd F.P

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

U. S. vs

Morsley, Allen

93-102-07-CR

AO 256A ®

Yr. | Docket No. |

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DEL		
		(a)	(b)	(c)
	(Document No.)			
2/18/94	TRANSCRIPT - TRIAL - 11/29/93 - Wilm. before Judge Fox - Talley Taylor Ct. Reporter TRANSCRIPT - TRIAL - 11/30/93 - Wilm. before Judge Fox - Talley Taylor Ct. Reporter TRANSCRIPT - TRIAL - 12/1/93 - Wilm. before Judge Fox - Talley Taylor Ct. Reporter TRANSCRIPT - Trial - 12/2/93 - Wilm. - before Judge Fox - Talley Taylor Ct. Reporter TRANSCRIPT - Trial - 12/3/93 - Wilm. - before Judge Fox - Talley Taylor Ct. Reporter			
2-25-94	40 MOTION TO WITHDRAW:: by deft. w/ c.s. cc: J. Fox.	sr 2-25-94		wsc
3/1/94	41. ORDER - counsel's m/withdraw is denied - (Fox, J) Cr. OB#55, P. 54 - lc: USA and Mr. Cooper (ent. 3/2/94)	sr		
3/3/94	42 MOTION TO FILE SENTENCING MEMORANDUM TWO DAYS OUT OF TIME w/cs - lc: Judge Fox			
3/3/94	43 SENTENCING MEMORANDUM w/cs. - lc: Judge Fox	sr sr		
3/7/94	44. MOTION FOR ORDER EXTENDING TIME - for sen date by the deft. w/cs. - lc: Judge Fox. 45. ORDER - m/ext. time for sen is DENIED. (Fox, J) Cr. Ob#55, P. 65 - lc: USA and Mr. Cooper. (ent. 3/7/94)	sr sr	3/7/94 3/7/94	
3/7/94	46 ORDER - govern's m/to file sen. memo. 2 days out of time is ALLOWED - memorandum to be filed. (Fox, J) Cr. OB#55, P. 68 lc: USA and counsel (ent. 3/7/94)			sr
3/8/94	-- Wilm. - Judge Fox - Talley Taylor Ct. Reporter Sentencing Atty Cooper oral motion to withdraw - allowed but to participate as standby counsel for the deft. 47. LETTER - from deft. to Mr. Cooper - made party of record per atty. PRE-SENTENCE REPORTA- FILED UNDER SEAL -- Deft. found in contempt (in open Court) - sentenced immediately (6 mos. consec.-) all sen. combined in oen judgment 48. JUDGMENT IN A CRIMINAL CASE (offenses after 11/1/87) Ct. 1 - Life Ct. 17 60 mos. impr consec. Cts. 18, 37, 44, 80 & 95 - 60 mos. concur Contempt - 6 mos. consec. (Total sen. Life plus 66 mos. consec.) In Custody No supervised release imposed \$400.00 special assess. due immed. \$16,800 fine w/o interest - payments to be handled by BOP Stm. of Reasons 5 yrs. DOB (Fox, J) Cr. OB#55, P. 88 - lc: USPO, PTS, deft., Mr. Cooper, Judge Fox, DOJ, F.Cen., F.Sec., 2c: USA and 3c: USM Advised of Right to Appeal - Notice of Appeal submitted			

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

U. S. vs

Morsley, Allen

93-102-07-CR-5

AO 256A

Yr. Docket No. Def.

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
2/18/94	TRANSCRIPT - TRIAL - 11/19/93 - Wilm. before Judge Fox - Talley Taylor Ct. Reporter TRANSCRIPT - TRIAL - 11/30/93 - Wilm. before Judge Fox - Talley Taylor Ct. Reporter TRANSCRIPT - TRIAL - 12/1/93 - Wilm. before Judge Fox - Talley Taylor Ct. Reporter TRANSCRIPT - Trial - 12/2/93 - Wilm. - before Judge Fox - Talley Taylor Ct. Reporter TRANSCRIPT - Trial - 12/3/93 - Wilm. - before Judge Fox - Talley Taylor Ct. Reporter				
2-25-94	40 MOTION TO WITHDRAW:: by deft. w/ c.s. cc: J. Fox.	sr	2-25-94	wsc	
3/1/94	41. ORDER - counsel's m/withdraw is denied - (Fox, J) Cr. OB#55, P. 54 - lc: USA and Mr. Cooper (ent. 3/2/94)	sr	3-1-94		
3/3/94	42 MOTION TO FILE SENTENCING MEMORANDUM TWO DAYS OUT OF TIME W/cs - lc: Judge Fox				
3/3/94	43 SENTENCING MEMORANDUM w/cs. - lc: Judge Fox	sr			
3/7/94	44. MOTION FOR ORDER EXTENDING TIME - for sen date by the deft. w/cs. - lc: Judge Fox.	sr	3/7/94		
	45. ORDER - m/ext. time for sen is DENIED. (Fox, J) Cr. Ob#55, P. 65 - lc: USA and Mr. Cooper. (ent. 3/7/94)	sr	3/7/94		
3/7/94	46 ORDER - govern's m/to file sen. memo. 2 days out of time is ALLOWED - memorandum to be filed. (Fox, J) Cr. OB#55, P. 68 lc: USA and counsel (ent. 3/7/94)				
3/8/94	-- Wilm. - Judge Fox - talley Taylor Ct. Reporter Sentencing Atty Cooper oral motion to withdraw - allowed but to participate as standby counsel for the deft.				
	47. LETTER - from deft. to Mr. Cooper - made party of record per atty.				
	PRE-SENTENCE REPORTA- FILED UNDER SEAL				
	-- Deft. found in contempt (in open Court) - sentenced immediately (6 mos. consec.) all sen. combined in oen judgment				
	48. JUDGMENT IN A CRIMINAL CASE (offenses after 11/1/87)				
	Ct. 1 - Life				
	Ct. 17 60 mos. impr consec.				
	Cts. 18, 37, 44, 80 & 95 - 60 mos. concur				
	Contempt - 6 mos. consec.				
	(Total sen. Life plus 66 mos. consec.)				
	In Custody				
	No supervised release imposed				
	\$400.00 special assess. due immed.				
	\$16,800 fine w/o interest - payments to be handled by BOP				
	Stm. of Reasons				
	5 yrs. DOB				
	(Fox, J) Cr. OB#55, P. 88 - lc: USPO, PTS, deft., Mr. Cooper, Judge Fox, DOJ, F.Cen., F.Sec., 2c: USA and 3c: USM	sr			
	Advised of Right to Appeal - Notice of Appeal submitted	sr			

B.P.
3rdUNITED STATES DISTRICT COURT
CRIMINAL DOCKET

AO 256A

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
3-8-94	49. NOTICE OF APPEAL by Deft. - 1c 4th Circuit Court of Appeals, 1c Judge Fox, 1c U.S. Atty., Probation, Pre-trial Services Marshal and Mr. Morsley. (ent. 3-11-94) ms				
3-11-94	APPEAL PACKET MAILED THIS DATE CONSISTING OF docketing statement, transmittal sheet, transcript order form CJA 24 and index.				
3-18-94	50. ORDER - The court consolidates these cases (94-5203 and 94-5204) for purposes of briefing and oral argument. Bert Montague, Clerk (ent. 3-18-94) ms				
3-21-94	TRANSCRIPT OF JURY TRIAL BEFORE THE HONORABLE JAMES C. FOX CHIEF U.S. DISTRICT JUDGE at Wilmington, N.C. Nov. 24, 1993 Volume 1 of 1 Pages 1 - 50 James Palmer, Court Reporter (ent. 3-21-94) ms				
3-23-94	51. NOTICE OF APPEAL by DEFT. - 1c 4th Circuit Court of Appeals, 1c Judge Fox, 1c U.S. Atty., probation, Pre-trial Services, Marshal and Mr. Morsley (ent. 3-24-94) ms				
3-24-94	APPEAL PACKET MAILED THIS DATE CONSISTING OF docketing statement, transmittal sheet, and index.				
3/25/93	Order - from 4th Circuit Court of Appeals - 94-5203 - 93-102 - 94-5204 - 93-102 - Court consolidates these cases for purposes of briefing & oral argument and directs that: 1. one joint brief shall be permitted per side; 2. the parties on each side shall bear the time allowed for oral argument; 3. each side shall notify the Court of the attorney designated as lead counsel within 10 days of the date of this order (Bert M. Montague, Clerk - 4th Circuit Court of Appeals ag				
5-9-94	TRANSCRIPT OF ARRAIGNMENT AND MOTION TO WITH-DRAW AS COUNSEL BEFORE THE HONORABLE JAMES C. FOX, CHIEF U.S. DISTRICT JUDGE at Wilmington, N.C. Nov. 22, 1993 Volume 1 of 1 Pages 1 - 24 Talley Taylor, Court Reporter. (ent. 5-10-94) ms				
5-9-94	TRANSCRIPT OF SENTENCING BEFORE THE HONORABLE JAMES C. FOX CHIEF U.S. DISTRICT JUDGE at Wilmington, NC.. March 8, 1994 Volume 1 of 1 Pages 1 - 42 Talley Taylor, Court Reporter (ent. 5-10-94) ms				
5-11-94	TRANSCRIPT OF JURY TRIAL BEFORE THE HONORABLE JAMES C. FOX, CHIEF U.S. DISTRICT JUDGE at Wilmington, N.C. November 24, 1993 Volume 1 Pages 1 - 50 James Palmer, Court Reporter (ent. 5-13-94) ms				
6-16-94	CERTIFICATE - Record contains sealed material - 1c 4th Circuit Court of Appeals, 1c Judge Fox, 1c Counsel of Record.				
8-17-94	CASE FILE MAILED THIS DATE CONSISTING OF 11 VOLUMES TO U.S. COURT OF APPEALS.				

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

U. S. vs

MORSLEY, ALLEN

AO 256A *

93-102-07-CR-

Yr. Docket No.

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DE		
		(a)	(b)	(c)
09/06/95 52	PUBLISHED OPINION - Affirmed in part, vacated in part and remanded by published opinion 1c Judge Fox, ent. 9-6-95)	ms		
10/02/95 53	JUDGMENT U.S. COURT OF APPEALS - the court affirmed the judgment of the D. Court 1c Judge Fox, U.S. Atty., Probation Pre-trial Services and Marshal. (ent. 10/02/95) ms			
04/22/97 54	MOTION UNDER 28 USC \$2255 TO VACATE, SET ASIDE OR CORRECT SENTENCE - by dft CIVIL NO. 5:97-CV-303-F	gnm		
04/25/97 55	PETITIONER ALLEN MORSLEY'S MOTION, REQUESTING A 60 DAY EXTENSION OF TIME, PURSUANT TO RULE 15(a) FED. RULES CIVIL PROCEDURE - w/cs lcc: Judge Fox fs			
04/29/97	Motion submitted to Judge Fox	gnm		
05/07/97 56	ORDER - petitioner's April 25, 1997, motion for a 60-day extension of time to supplement his \$2255 motion is denied (FOX) FOB# 9, p. 209 (ent. 05/07/97) cc: dft	gnm		
06/03/97 57	ORDER - that this action is dismissed as utterly meritless pursuant to Rule 4, Rules Governing \$2255 proceedings (FOX) FOB# 10, p. 54 cc: USA, dft (ent. 06/03/97)	gnm		
06/17/97 58	ORDER - returning pleading entitled "Memorandum of Law in Support of Petitioner's Motion to supplement Accord" for failure to comply with Local Rules - no original signature (DIXON) FOB# 10, p. 83 cc: dft	gnm		
6/24/97 59	ORDER - returning the pleading entitled "Motion to make additional findings of fact and to amend the judgment pursuant to Rule 52(b) of the FRCP" for failure to comply with the Local Rules - no original signature (DIXON) FOB# 10, p. 103 c: served. (e. 6/24/97)	anh		
07/07/97 60	MOTION TO MAKE ADDITIONAL FINDINGS OF FACTS AND TO AMEND THE JUDGMENT PURSUANT TO RULE 52(b) OF FEDERAL RULES OF CIVIL PROCEDURE - by dft w/cs	gnm		
07/07/97 61	PETITIONER MORSLEY'S MEMORANDUM OF LAW IN SUPPORT OF PETITIONER'S MOTION TO SUPPLEMENT ACCORD. RULE 15(A) FED CIVIL PROC. IN COMPLIANCE WITH PETITIONER'S MOTION UNDER TITLE 28 U.S.C. § 2255 AND ACCOMPANYING REFERENCES HERE WITH - by dft w/cs	gnm		
07/10/97	Case file sent to Judge Fox	gnm		
07/14/97 62	ORDER - denying petitioner's July 7, 1997 Motion to Make Additional Findings of Facts and to Amend to Judgment (FOX) FOB# 10, p. 159 cc: dft, USA (ent. 07/14/97)	gnm		
07/31/97 63	MOTION TO RECONSIDER - by dft w/cs	gnm		
08/25/97	Motion submitted to Judge Fox	gnm		
08/29/97 64	ORDER - denying motion to reconsider (FOX) FOB# 11, p. 54	gnm		
10/06/97 65	MOTION TO RECONSIDER - by dft (ent. 08/29/97)	gnm		
10/06/97 66	MOTION TO SUPPLEMENT PETITIONER'S \$2255 - by dft	gnm		
10/06/97 67	MEMORANDUM OF LAW IN SUPPORT OF PETITIONER'S MOTION TO SUPPLEMENT HIS \$2255 MOTION - by dft	gnm		
10/09/97	Case submitted to Judge Fox	gnm		

5- W

ATTACHMENTS --- LAB REPORT

NOV 19 '93 04:53PM US ATTY'S OFF EDNC

P.2

North Carolina
STATE BUREAU OF INVESTIGATION
 Department of Justice
 RALEIGH
LABORATORY REPORT

TO: Detective R. G. Moss
 Raleigh Police Department
 P. O. Box 590
 Raleigh, N. C. 27602

DATE: October 14, 1993

SBI LAB NO.: R930019223

SBI FILE NO.:

TYPE OF CASE: Controlled Substances Act

AGENCY FILE NO.: 038161

LOCATION: Wake County

EXAMINED BY: W. C. Stark

SUBJECT: RALEEK (LNU)
 TESHOMI RASHIDA CRENSHAW
 JOSEPH EDWARD BOSTIC ~~III~~ ?
 *

MATERIAL SUBMITTED BY: N. W. Goddard

DATE OF OFFENSE: September 23, 1993

DATE SUBMITTED: September 28, 1993

ITEMS SUBMITTED:

Item #1: Plastic bag containing white substance.
 Item #2: Plastic bag containing white substance.
 Item #4: Plastic bag containing white substance.

TYPE ANALYSIS REQUESTED:

Analyze for controlled substances.

RESULTS OF ANALYSIS:

Item #1: Cocaine - Schedule II.
 Weight of white substance - 38.2 grams.
 Item #2: Cocaine - Schedule II.
 Weight of white substance - 30.7 grams.
 Item #4: Cocaine - Schedule II.
 Weight of white substance - 0.4 gram.

DISPOSITION OF EVIDENCE:

The unconsumed portion of the evidence is being retained for pick-up.

Michael F. Easley, Attorney General of the State of North Carolina, hereby certify that the form identified as: North Carolina State Bureau of Investigation, Department of Justice, Laboratory Report is a form approved by me for purpose stated in G.S. 90-95(g) and approved by me in compliance with the said statute.

IES TO:

WCS:pg

Mr. Colon Willoughby, D. A.
 SAC R. K. Bulla

THIS REPORT IS TO BE USED ONLY IN CONNECTION WITH AN OFFICIAL CRIMINAL INVESTIGATION

James J. Coman
 James J. Coman, Director

This report represents a true and accurate result of my analysis on the item(s) described.

W. C. Stark
W. C. Stark

P.3

NO. 12-188 CONVEYABLE ATTORNEY OFF EDNC

North Carolina
STATE BUREAU OF INVESTIGATION

Department of Justice
RALEIGH

LABORATORY REPORT

TO: Detective R. G. Moss
Raleigh Police Department
110 South McDowell Street
Raleigh, N. C. 27602

DATE: October 20, 1993

SBI LAB NO.: R930019223

SBI FILE NO.:

AGENCY FILE NO.: 038161

EXAMINED BY: R. L. Navarro

MATERIAL SUBMITTED BY: N. W. Goddard

DATE OF OFFENSE: September 23, 1993

DATE SUBMITTED: September 28, 1993

TYPE OF CASE: Controlled Substances Act

LOCATION: Wake County

SUBJECT: RALEEK (LNU) (SUSPECT)
TESHOMI RASHIDA CRENSHAW (SUSPECT)
JOSEPH EDWARD BOSTIC (SUSPECT)

ITEMS SUBMITTED:

Item #3: Two (2) plastic bags.
Item #5: One (1) brown paper bag.

TYPE EXAMINATION REQUESTED:

Latent print examination and comparison.

RESULTS OF EXAMINATION:

There were no latent prints of value for identification purposes developed on Items #3 and #5.

DISPOSITION OF EVIDENCE:

Items #3 and #5 are being held for pick-up.

RLN/mjp

Michael F. Easley, Attorney General of the State of North Carolina, hereby certify that the form identified as North Carolina State Bureau of Investigation, Department of Justice, Laboratory Report is a form approved by me for a purpose stated in G.S. 90-95(g) and approved by me in compliance with the said statute.

SENT TO:

Mr. Colon Willoughby, D. A.

THIS REPORT IS TO BE USED ONLY IN CONNECTION WITH AN OFFICIAL
CRIMINAL INVESTIGATION.

James J. Coman, Director

This report represents a true and accurate result of my analysis
on the item(s) described.

Ricky L. Navarro
R. L. Navarro

North Carolina State Bureau of Investigation. To make public or reveal
information in this report is prohibited by law.

ATTACHMENT----- VERDICT SHEET

(AO156(Rev.5/85) Verdict

TRIED IN OPEN COURT
ON 12-3-93
Before W. R. R. [unclear]
U. S. District Court
Eastern District of N. C.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA

V.

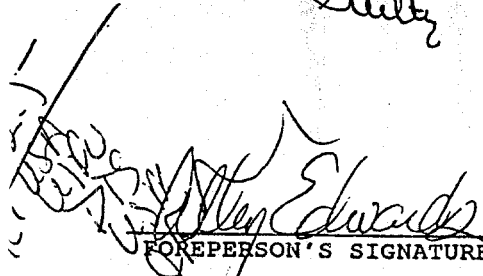
VERDICT

CASE NO. 93-102-07-CR-5F

ALLEN MORSLEY
a/k/a Raleek
a/k/a Baldhead

WE, THE JURY FIND: the defendant, Allen Morsley, a/k/a Raleek,
a/k/a Baldhead,

Guilt Guilt _____, as to Count 1,
Guilt Guilt _____, as to Count 17,
Guilt Guilt _____, as to Count 18,
Guilt Guilt _____, as to Count 37,
Guilt Guilt _____, as to Count 44,
Guilt Guilt _____, as to Count 80,
Guilt Guilt _____, as to Count 81,
Guilt Guilt _____, as to Count 95.


FOREPERSON'S SIGNATURE

12-3-93
DATE

29

1-Y

ATTACHMENT --- FLECHER JOHNSON *

ATTEMPT TO IDENTIFIE PETITIONER.

page # 49-60 .

1 Q. NOW, ABOUT WHEN WAS THIS EXACTLY WHEN YOU HAD THIS
2 CONVERSATION AT STANLEY LEACH'S GARAGE?

3 A. I WANT TO SAY APPROXIMATELY MARCH OR APRIL OF '92, 1992.

4 MR. COOPER: OBJECTION, YOUR HONOR, SPECULATION AND
5 CONJECTURE IF HE DOESN'T KNOW.

6 THE COURT: OBJECTION'S OVERRULED.

7 BY MS. HAMILTON:

8 Q. NOW, THIS INDIVIDUAL THAT YOU FIRST MET AT STANLEY LEACH'S
9 GARAGE, CAN YOU IDENTIFY THIS INDIVIDUAL YOU CALL RALEEK?

10 A. YES, MA'AM, I CAN.

11 Q. COULD YOU PLEASE IDENTIFY HIM --

12 MR. COOPER: OBJECTION, YOUR HONOR.

13 BY MS. HAMILTON:

14 Q. -- BY WHERE HE'S SEATED AND DESCRIBE WHAT HE HAS ON?

15 THE COURT: OBJECTION'S OVERRULED.

16 MR. COOPER: MAY WE APPROACH, YOUR HONOR?

17 THE COURT: YES, SIR.

18 (BENCH CONFERENCE ON THE RECORD.)

19 THE COURT: WHAT'S YOUR OBJECTION?

20 MR. COOPER: COULD WE HAVE A VOIR DIRE ON THIS WITNESS
21 BEFORE HE GIVES AN IN-COURT IDENTIFICATION? THIS GENTLEMAN HAS
22 IDENTIFIED MY CLIENT IN JAIL --

23 COURT REPORTER: I CAN'T HEAR YOU.

24 MR. COOPER: -- IDENTIFIED MY CLIENT IN JAIL, UNDER
25 IMPROPER CIRCUMSTANCES AND HE'S GIVEN CONFLICTING DESCRIPTIONS

1 OF MY CLIENT. I DON'T THINK IT WOULD BE PROPER FOR HIM TO GIVE
2 AN IN-COURT IDENTIFICATION. I THINK A VOIR DIRE UNDER THESE
3 CIRCUMSTANCES MIGHT BE HELPFUL TO THE COURT.

4 MS. HAMILTON: THIS HAS ALREADY BEEN THE SUBJECT OF A
5 MOTION WHICH HAS BEEN DENIED. I DON'T KNOW WHERE HE GETS THE
6 INFORMATION THAT THERE'S CONFLICTING DESCRIPTIONS GIVEN OF THE
7 DEFENDANT.

8 MR. COOPER: HE SAID RALEEK WAS STOUT; MY DEFENDANT'S
9 ANYTHING BUT STOUT.

10 THE COURT: WELL, YOU CAN CROSS-EXAMINE HIM ON THE
11 ISSUE. OBJECTION'S OVERRULED.

12 (END OF BENCH CONFERENCE.)

13 BY MS. HAMILTON:

14 Q. WOULD YOU PLEASE IDENTIFY MR. RALEEK BY WHERE HE'S SEATED?

15 A. YES, HE'S THE THIRD GENTLEMAN FROM MY RIGHT.

16 MR. COOPER: OBJECTION, MOTION TO STRIKE.

17 BY MS. HAMILTON:

18 Q. COULD YOU PLEASE TELL THE COURT WHAT COLOR SHIRT HE HAS ON?

19 A. I WANT TO SAY A PURPLE SHIRT, TO ME IT LOOKS LIKE PURPLE,
20 BUT IT COULD BE PINKISH.

21 Q. OKAY, STARTING FROM --

22 THE COURT: THE OBJECTION IS SUSTAINED. THE JURY WILL
23 DISREGARD THE IDENTIFICATION OF THIS WITNESS. GO FORWARD,
24 PLEASE.

25 (BENCH CONFERENCE ON THE RECORD.)

1 THE COURT: IT'S PRETTY OBVIOUS TO ME HE DOESN'T KNOW
2 WHAT HE'S TALKING ABOUT.

3 MS. HAMILTON: YOUR HONOR, THERE'S NO ONE THERE IN A
4 PURPLE SHIRT.

5 THE COURT: THERE SURE ISN'T.

6 MS. HAMILTON: I'M THINKING MAYBE WITH THE LIGHTING
7 HE'S SEEING SOME DIFFERENT COLORS. COULD WE HAVE HIM COUNT?

8 MR. COOPER: YOUR HONOR, I ASKED FOR A VOIR DIRE. I
9 MEAN, WHITE AND PURPLE IS A BIG DISTINCTION.

10 (END OF BENCH CONFERENCE.)

11 THE COURT: MEMBERS OF THE JURY, WOULD YOU STEP TO THE
12 JURY ROOM, PLEASE. WE'LL BRING YOU BACK IN JUST A FEW MOMENTS.

13 (THE FOLLOWING PROCEEDINGS WERE HELD IN THE ABSENCE OF
14 THE JURY AND ALTERNATES.)

15 (BENCH CONFERENCE ON THE RECORD.)

16 THE COURT: WHAT'S WRONG WITH THE MAN?

17 MS. HAMILTON: YOUR HONOR, THERE'S NOTHING WRONG WITH
18 THE MAN. I MEAN, WITH THE LIGHTING AND EVERYTHING, I DON'T KNOW
19 IF HE'S KIND OF COLOR BLIND.

20 THE COURT: THIS LIGHTING IS PERFECTLY NORMAL AND
21 PERFECTLY ADEQUATE.

22 MS. HAMILTON: WELL, I MEAN, I CAN TELL YOU THAT HE'S
23 IDENTIFIED HIM NUMEROUS TIMES.

24 THE COURT: (PAUSE.) ALL RIGHT, GENTLEMEN, IF YOU'LL
25 STEP DOWN.

1 (END OF BENCH CONFERENCE.)

2 THE COURT: MR. JOHNSON, HOW MANY TIMES HAVE YOU SEEN
3 THE GENTLEMAN YOU CALL RALEEK?

4 THE WITNESS: THE WHOLE TIME SINCE I'VE KNOWN MR. ROY
5 LEE I'VE SEEN HIM AROUND ABOUT APPROXIMATELY ABOUT SIX TIMES.

6 THE COURT: DO YOU KNOW HIM WHEN YOU SEE HIM?

7 THE WITNESS: YES, SIR, I DO.

8 THE COURT: HOW MANY TIMES HAVE YOU TALKED TO HIM?

9 THE WITNESS: APPROXIMATELY ABOUT EIGHT OR TEN TIMES.

10 THE COURT: DO YOU HAVE THE ABILITY TO IDENTIFY HIM IN
11 THIS COURTROOM?

12 THE WITNESS: YES, SIR, I DO.

13 THE COURT: WHO DO YOU THINK HAS GOT THE PURPLE SHIRT
14 ON?

15 THE WITNESS: DUE TO THE FACT, YOUR HONOR, THAT THE
16 COLOR OF THE LIGHT IS COMING OFF THE FLOOR REFLECTED PURPLE, TO
17 ME. BUT IT IS THE THIRD GENTLEMAN TO MY RIGHT ON THE END OF THE
18 TABLE THERE, SIR.

19 THE COURT: YOU WALK OVER TO HIM AND POINT HIM OUT TO
20 ME.

21 THE WITNESS: THIS GENTLEMAN RIGHT HERE, SIR.

22 THE COURT: ALL RIGHT, COME BACK AND SIT DOWN. THE
23 RECORD WILL REFLECT HE WALKED IMMEDIATELY TO MR. MORSLEY AND
24 POINTED TO HIM. DID YOU WANT TO ASK HIM ANY QUESTIONS, MR.
25 COOPER?

1 MR. COOPER: YES, SIR, YOUR HONOR.

2 THE COURT: ALL RIGHT, GO AHEAD.

3 V O I R D I R E E X A M I N A T I O N

4 BY MR. COOPER:

5 Q. MR. JOHNSON, DO YOU REMEMBER GIVING INTERVIEWS TO AGENT
6 MICHAEL FANELLY ON MAY 27TH, 1993?

7 A. I DIDN'T HEAR YOU.

8 Q. DO YOU RECALL GIVING INTERVIEWS TO AGENT MICHAEL FANELLY,
9 OR FINELLI, I'M NOT SURE HOW TO PRONOUNCE HIS NAME.

10 A. FINELLI, OR MIKE FANELLY.

11 Q. OKAY, MR. FANELLY. ON MAY 27TH, 1993.

12 A. YES.

13 Q. AND THEN THAT OCCASION, DID YOU MENTION THE NAME OF RALEEK?

14 A. POSSIBILITY I HAVE.

15 Q. WELL, IF YOU HAD, DO YOU BELIEVE MR. FANELLY WOULD HAVE
16 INCLUDED IT IN HIS REPORT?

17 MS. HAMILTON: OBJECTION, YOUR HONOR.

18 THE COURT: OBJECTION'S SUSTAINED.

19 MR. COOPER: ALL RIGHT. MAY I PROCEED FURTHER, YOUR
20 HONOR?

21 BY MR. COOPER:

22 Q. DO YOU RECALL IN CONNECTION WITH THIS CASE MAKING A SERIES
23 OF PHONE CALLS THAT WERE TAPED, TO MR. HENDRICKS AND -- WELL, IN
24 PARTICULAR, TO MR. HENDRICKS. DO YOU RECALL THAT?

25 A. YES, SIR, I HAVE.

1 Q. AND DO YOU RECALL ASKING ABOUT ROY LEE?

2 A. THERE WAS -- I VISITED MR. HENDRICKS TO HIS HOME THAT DAY.

3 Q. WAS THAT BEFORE OR AFTER THE PHONE CALL?

4 A. WE HAD SEVERAL PHONE CALLS, SIR.

5 Q. OKAY, IN PARTICULAR, ONE ON JUNE 10TH, 1993. DO YOU RECALL
6 THAT PHONE CALL?

7 A. CAN I ASK WHAT THE PHONE CALL WAS PERTAINED?

8 Q. WELL, ONE OF THE QUESTIONS THAT YOU ASKED WAS WHO ROY LEE
9 WAS?

10 A. YES, BECAUSE I WASN'T CORRECT PRONOUNCING HIS NAME AT THE
11 TIME TO MR. HENDRICKS. HE DIDN'T UNDERSTAND THE PRONUNCIATION
12 THAT I WAS GIVING HIM FOR HIS NAME.

13 Q. WELL, IS THAT BECAUSE HE DIDN'T UNDERSTAND YOUR
14 PRONUNCIATION OR IS THAT BECAUSE HE DIDN'T KNOW WHO YOU WERE
15 TALKING --

16 A. HE DIDN'T UNDERSTAND MY PRONUNCIATIONS.

17 Q. WOULD IT HELP REFRESH YOUR RECOLLECTION IF I SHOWED YOU A
18 COPY OF THE TRANSCRIPT OF THAT CONVERSATION BETWEEN YOURSELF AND
19 MR. HENDRICKS?

20 A. YES, DUE TO THE FACT THAT MR. HENDRICKS WAS UPSTAIRS AT THE
21 TIME, I WAS DOWNSTAIRS AT THE TIME, HE PROBABLY COULD NOT HEAR
22 ME ALSO, TO UNDERSTAND MY PRONUNCIATION.

23 MR. COOPER: YOUR HONOR, BEAR WITH ME JUST A MOMENT.

24 THE COURT: SURELY. (PAUSE.)

25 BY MR. COOPER:

1 Q. WELL, ISN'T IT TRUE THAT WHEN YOU FIRST ASKED ANDRE ABOUT
2 ROY LEE, HE ASKED YOU "WHO'S THAT?"

3 A. YES.

4 Q. AND DIDN'T HE TELL YOU THAT HE DIDN'T KNOW NO ROY LEE?

5 A. I'M NOT SURE IF HE DID THAT, BECAUSE LIKE I SAID --

6 Q. DIDN'T YOU THEN TRY TO COME BACK AND TALK ABOUT BALDHEAD?

7 A. YES.

8 Q. AND HE SAID HE DIDN'T KNOW WHO THAT WAS EITHER?

9 A. NO.

10 Q. YOU DON'T RECALL THAT CONVERSATION?

11 A. I RECALL THE CONVERSATION, SIR.

12 Q. AND YOU TRIED FOUR OR FIVE TIMES TO IDENTIFY WHO ROY LEE
13 WAS, AND ANDRE DIDN'T KNOW WHO YOU WERE TALKING ABOUT?

14 A. YES, IN THE PAST, SIR, MR. HENDRICKS AND MYSELF HAD
15 CONVERSATIONS ABOUT MR. ROY LEE, BECAUSE THEY KNEW ONE ANOTHER.

16 Q. BUT ROY LEE OR RALEEK?

17 A. ROY LEE -- I PRONOUNCED IT AS ROY LEE. THAT'S THE REASON
18 WHY MR. LEACH AND MYSELF JUST ACKNOWLEDGED HIM AS BEING BALDHEAD
19 BETWEEN OURSELVES, BUT WE KNEW WHO WE WERE SPEAKING OF.

20 Q. SO YOU AND MR. HENDRICKS KNEW WHO BALDHEAD WAS?

21 A. MR. LEACH.

22 THE COURT: WHAT DOES THIS HAVE TO DO WITH HIS ABILITY
23 TO OBSERVE AND KNOW THIS MAN IF HE SEES HIM? WHAT HAS THIS GOT
24 TO DO WITH HIS ABILITY TO MAKE HIS IDENTIFICATION?

25 MR. COOPER: MY POINT BEING THAT DURING THIS TIME

1 FRAME YOU HAD ALSO BEEN TALKING WITH DETECTIVES AS WELL, HADN'T
2 YOU?

3 THE WITNESS: YES.

4 BY MR. COOPER:

5 Q. AND THEY WERE ASKING YOU ABOUT THIS GUN NAMED RALEEK,
6 WEREN'T THEY?

7 A. YES, THEY WAS.

8 Q. AND THEY WANTED TO KNOW WHO RALEEK WAS, DIDN'T THEY?

9 A. YES.

10 Q. AND THEY DIDN'T KNOW WHO ROY LEE WAS, DID THEY?

11 A. NO, THEY DIDN'T.

12 Q. THEY WERE ASKING YOU IF RALEEK AND ROY LEE COULD BE THE
13 SAME PERSON, WEREN'T THEY?

14 A. TO THEM, MY PRONUNCIATION OF MR. ROY LEE DIDN'T SOUND RIGHT
15 TO THEM.

16 Q. ALL RIGHT, NOW LET'S GO TO SEPTEMBER 23RD OF THIS YEAR.
17 DID YOU HAVE AN OPPORTUNITY TO GO TO THE RALEIGH POLICE STATION
18 ON THAT DAY?

19 A. YES.

20 Q. AND WHAT TIME OF DAY WAS IT?

21 A. IT WAS AT NIGHT, I WANT TO SAY ABOUT APPROXIMATELY -- I
22 RECEIVED A PHONE CALL I'D SAY ABOUT BETWEEN THE HOURS OF 9:00
23 P.M. AND BETWEEN THE HOURS OF 11 O'CLOCK, P.M.

24 Q. OKAY. NOW, BEFORE THIS, YOU HAD BEEN TALKING WITH THE
25 POLICE AGENTS AS TO THE PROGRESS OF THIS CASE, HAD YOU NOT?

1 A. YES.

2 Q. AND YOU KNEW THAT EVERYBODY HAD BEEN ARRESTED EXCEPT FOR
3 THIS GENTLEMAN BY THE NAME OF RALEEK; ISN'T THAT TRUE?

4 A. CORRECT.

5 Q. AND WHO CALLED YOU AT NINE O'CLOCK ON THE 23RD?

6 A. I GOT A PAGE FROM OFFICER, MR. RAY MOSS.

7 Q. AND WHAT DID HE SAY WHEN HE PAGED YOU?

8 A. HE ASKED ME HE WANTED ME TO COME DOWN TO IDENTIFY BECAUSE
9 HE THINK HE GOT THE GENTLEMAN, ROY LEE.

10 Q. OKAY. AND WHEN YOU GOT TO THE POLICE STATION, WHO ELSE WAS
11 THERE?

12 A. OFFICER MIKE FANELLY AND MR. MOSS.

13 Q. AND DID THEY SAY ANYTHING TO YOU AT THAT TIME?

14 A. THEY ASKED ME IS THIS THE GENTLEMAN NAMED RALEEK.

15 Q. NOW, WHEN THEY ASKED YOU THAT, WHAT WERE YOU LOOKING AT?

16 A. I WAS LOOKING THROUGH A GLASS WITH A ROOM ON THE OTHER SIDE
17 WITH A GENTLEMAN.

18 Q. WAS THERE ANYBODY ELSE IN THAT ROOM? WHO ALL WAS IN THAT
19 ROOM?

20 A. IN THE ROOM WHERE I IDENTIFIED MR. RALEEK?

21 Q. WHERE YOU IDENTIFIED THE GENTLEMAN THAT WAS IN THAT ROOM.

22 A. OKAY, THE GENTLEMAN THAT WAS SUPPOSED TO BE MR. RALEEK.

23 Q. THE GENTLEMAN THAT WAS SUPPOSED TO BE RALEEK?

24 A. WITH THAT GENTLEMAN THAT I WAS SUPPOSED TO BE IDENTIFYING,
25 IS THAT WHAT YOU'RE ASKING ME?

1 Q. WHO ALL WAS IN THAT ROOM?

2 A. I'M NOT SURE WHO ALL ELSE WAS IN THAT ROOM.

3 Q. WAS THERE MORE THAN ONE PERSON IN THAT ROOM?

4 THE COURT: LET HIM FINISH, COUNSEL.

5 THE WITNESS: I'M SURE THERE WAS MORE THAN ONE OR TWO
6 IN THAT ROOM.

7 THE COURT: SO THERE WAS NO MORE THAN TWO?

8 THE WITNESS: I'M NOT SURE. OFFICER MOSS WENT INSIDE.

9 BY MR. COOPER:

10 Q. SO, ISN'T IT A FACT THAT THERE WERE ONLY TWO PEOPLE IN THAT
11 ROOM, OFFICER MOSS AND ANOTHER BLACK GENTLEMAN?

12 A. IT COULD HAVE BEEN ONE --

13 Q. (INTERPOSING) NOW, WHEN YOU FIRST DESCRIBED ROY LEE TO THE
14 POLICE OFFICERS, WHAT KIND OF DESCRIPTION DID YOU GIVE?

15 A. I GAVE HIM A SHORT MALE, ABOUT -- ABOUT MY HEIGHT, JUST A
16 LITTLE SHORTER, LOW-CUT HAIR. WE CALLED HIM BALDHEAD.

17 Q. DID YOU SAY WHETHER HE WAS FAT, SKINNY?

18 A. WELL, HE LOOKED -- I'M A LITTLE -- I CONSIDER MYSELF A
19 LITTLE FRAMED GENTLEMAN.

20 Q. WELL, IN FACT, DIDN'T YOU CALL HIM STOUT?

21 A. POSSIBILITY.

22 Q. OKAY. NOW, HOW TALL ARE YOU?

23 A. I'M 5'9", SIR.

24 Q. 5'9". SO YOU SAY HE'S JUST A LITTLE BIT SHORTER THAN YOU?

25 A. YES.

1 Q. OKAY. WOULD YOU STAND FOR ME, PLEASE?

2 A. YOU WANT ME TO GET DOWN ON THE BOTTOM.

3 Q. WELL, YES, THAT WOULD BE HELPFUL. (WITNESS COMPLIES.)

4 OKAY, THANK YOU. YOU CAN GO BACK UP. NOW, WHEN YOU SAY JUST A
5 LITTLE SHORTER, YOU DON'T MEAN MORE THAN TWO INCHES, DO YOU?

6 A. POSSIBILITY.

7 THE COURT: MR. COOPER, OUR RULES ARE YOU CONDUCT YOUR
8 EXAMINATION SITTING DOWN.

9 MR. COOPER: OKAY. I'M SORRY.

10 THE COURT: THAT'S ALL RIGHT.

11 BY MR. COOPER:

12 Q. EARLIER, NOW ISN'T IT TRUE THAT IN YOUR INITIAL STATEMENT
13 TO AGENT FANELLY, YOU HAD ONLY SAID THAT ROY LEE HAD ONLY BOUGHT
14 TWO OR THREE TIMES?

15 A. FROM ME, THAT HE HAD BOUGHT PERSONALLY FROM ME, TWO OR
16 THREE TIMES.

17 Q. OKAY. WELL, ISN'T IT TRUE, YOU JUST TESTIFIED A MOMENT
18 AGO, THAT YOU HAD RALEEK'S PAGER NUMBER, IF ROY LEEK WAS RALEEK,
19 WHY DIDN'T YOU GIVE HIM A CALL WHEN THE AGENTS CONTACTED YOU AS
20 YOU DID EVERYBODY ELSE?

21 A. SIR, I TRIED.

22 THE COURT: ALL RIGHT. I'M GOING -- I THINK I
23 UNDERSTAND THE SITUATION. DO YOU WANT TO ASK ANY QUESTIONS OF
24 THIS MAN, MS. HAMILTON?

25 MS. HAMILTON: JUST TO CONTINUE IN FRONT OF THE JURY

1 WITH MY DIRECT. I HAVE NOTHING ON THIS LINE OF QUESTIONING.

2 THE COURT: ANYTHING FURTHER IN CONJUNCTION WITH HIS
3 ABILITY TO IDENTIFY HIM?

4 MR. COOPER: NO FURTHER QUESTIONS, YOUR HONOR. IF I
5 MIGHT BE HEARD AS TO ARGUMENT. I THINK THAT CIRCUMSTANCES ARE
6 CLEARLY THAT HE THOUGHT HE WAS DEALING WITH A ROY LEE, AND BASED
7 ON HIS CONVERSATIONS WITH THE POLICE OFFICERS, THEN HE CONVERTED
8 THAT INTO RALEEK, AND HE CARRIED THAT ON WITH HENDRICKS.

9 THE COURT: WELL, I THINK HE MAY BE CONFUSED ABOUT THE
10 PRONUNCIATION OF THE MAN'S NAME, BUT HE'S TESTIFIED HE DEALT
11 WITH HIM OR SAW HIM AT LEAST ON SIX OCCASIONS, AS I UNDERSTOOD
12 IT. HE TALKED WITH HIM AS MANY AS TEN, AND HE WALKED DIRECTLY
13 TO HIM IN THIS COURTROOM REGARDLESS OF THE SITUATION WHERE YOU
14 HAVE PREVIOUS -- OR A QUESTIONABLE LINE-UP SITUATION. I'M GOING
15 TO OVERRULE YOUR OBJECTION, MR. COOPER. WE'LL CONTINUE IN A FEW
16 MOMENTS. WE'LL TAKE A RECESS UNTIL 10:40.

17 (RECESS FROM 10:31 A.M., UNTIL 10:40 A.M.)

18 (THE FOLLOWING PROCEEDINGS WERE HELD IN THE PRESENCE
19 OF THE JURY AND ALTERNATES.)

20 THE COURT: PLEASE BE SEATED AND WE'LL CONTINUE.

21 MS. HAMILTON: YOUR HONOR, MAY WE APPROACH?

22 THE COURT: YES, MA'AM.

23 (BENCH CONFERENCE ON THE RECORD.)

24 MS. HAMILTON: YOUR HONOR, I WOULD LIKE TO ASK AT THIS
25 TIME THAT THE COURT INDICATE THAT THE DEFENDANT, RALEEK, WAS

2- W

ATTACHMENTS--- CODEFENDANTS SHIRT COLOR
BEING POINTED OUT THROUGH OUT THE TRIAL

619-620 , 564 , 583 , 623 .

1 YOUR SIGNATURE?

2 A. YES.

3 Q. AND YOU PAID FOR THAT RENTAL CAR?

4 A. YES.

5 Q. AND THAT INCLUDES THE MILEAGE TO NEW YORK AND BACK AGAIN?

6 A. WELL, THE MILEAGE, IT WASN'T A CHARGE FOR MILEAGE.

7 Q. SO, THAT MILEAGE WAS INCLUDED IN IT?

8 A. YES.

9 Q. SO, THEY RECORDED THE MILEAGE, BUT YOU DIDN'T GET CHARGED
10 EXTRA FOR THAT?

11 A. THE MILEAGE WAS FREE BECAUSE IT WAS A WEEKLY RENTAL.

12 THE COURT: YOU'LL HAVE TO SPEAK UP.

13 THE WITNESS: THE MILEAGE WAS FREE BECAUSE IT WAS A
14 WEEKLY RENTAL.

15 THE COURT: ALL RIGHT.

16 MS. HAMILTON: YOUR HONOR, AT THIS TIME I WOULD MOVE
17 GOVERNMENT EXHIBIT 300 INTO EVIDENCE.

18 THE COURT: IT'S ADMITTED.

19 (GOVERNMENT EXHIBIT NUMBER 300 WAS
20 OFFERED AND ADMITTED INTO EVIDENCE.)

21 BY MS. HAMILTON:

22 Q. DO YOU SEE YOUR NEPHEW IN THE COURTROOM, MR. MONTAGUE?

23 A. YES.

24 Q. WOULD YOU TELL THE JURY WHERE HE IS SEATED?

25 A. OVER THERE BESIDE -- I GUESS THAT'S HIS ATTORNEY.

1 Q. DO YOU KNOW WHAT COLOR SHIRT HE HAS ON?

2 A. I DON'T KNOW IF THAT'S A SHIRT OR JACKET.

3 Q. CAN YOU SAY WHAT COLOR THE TOP PART OF HIS --

4 MS. HAMILTON: IF THE RECORD COULD REFLECT HE'S
5 IDENTIFIED THE DEFENDANT, TUVAL MCKOY.

6 THE COURT: WHAT COLOR SHIRT -- JACKET DOES HE HAVE
7 ON?

8 THE WITNESS: I DON'T -- I DON'T KNOW WHAT THE
9 PROPER COLOR FOR THAT IS. A BROWN -- A BROWNISH-ORANGE.

10 THE COURT: CAN YOU COUNT BEGINNING WITH THE FIRST
11 GENTLEMAN AT THAT TABLE AND STOP WHEN YOU REACH MR. MCKOY.

12 THE WITNESS: IT'S HIM STANDING UP.

13 THE COURT: ALL RIGHT, THANK YOU. THE RECORD MAY
14 REFLECT HE IDENTIFIED MR. MCKOY.

15 MS. HAMILTON: I HAVE NOTHING FURTHER OF THIS
16 WITNESS, YOUR HONOR.

17 THE COURT: MR. DUNCAN?

18 MR. DUNCAN: NO QUESTIONS.

19 THE COURT: MR. COOPER?

20 MR. COOPER: NO QUESTIONS, YOUR HONOR.

21 THE COURT: MR. DAVIS?

22 MR. DAVIS: NO QUESTIONS.

23 THE COURT: YOU MAY STEP DOWN. THANK YOU.

24 MS. HAMILTON: MAY THE WITNESS BE EXCUSED, YOUR
25 HONOR?

564

1 PERSON IN THE COURTROOM?

2 A. YES; I DO.

3 Q. WOULD YOU PLEASE IDENTIFY HIM BY WHERE HE'S SEATED.

4 A. THE GENTLEMAN WITH THE RED-COLORED SHIRT.

5 MS. HAMILTON: YOUR HONOR, IF THE RECORD COULD
6 REFLECT HE'S IDENTIFIED THE DEFENDANT.

7 THE COURT: YES, MA'AM.

8 BY MS. HAMILTON:

9 Q. NOW, PRIOR TO YOU BEING ARRESTED IN NORTH CAROLINA ON
10 DRUG AND GUN CHARGES, HAVE YOU EVER BEEN ARRESTED BEFORE?

11 A. YES; I HAVE.

12 Q. HAVE YOU EVER BEEN CONVICTED OF ANY CRIMES BEFORE THAT?

13 A. YES.

14 Q. WHAT WAS THAT?

15 A. I HAD A PREVIOUS DRUG CHARGE IN NORTH CAROLINA IN 1989.

16 MS. HAMILTON: I HAVE NOTHING FURTHER OF THIS
17 WITNESS, YOUR HONOR.

18 THE COURT: MR. DUNCAN.

19 MR. DUNCAN: NO QUESTIONS.

20 THE COURT: MR. COOPER.

21 MR. COOPER: NO QUESTIONS.

22 THE COURT: MR. DAVIS.

23 C R O S S - E X A M I N A T I O N 10:07 A.M.

24 BY MR. DAVIS:

25 Q. MR. DAVIS, WERE YOU BORN IN THE STATE OF NEW YORK?

583

1 BRING IT OUT WITH YOUR OFFICER OR YOU CAN ATTEMPT TO REFRESH
2 HER RECOLLECTION WITH HER GRAND JURY TESTIMONY, OR YOU CAN
3 INTRODUCE IT.

4 MR. DAVIS: WE'RE ENTITLED TO HER STATEMENT THAT SHE
5 GAVE TO THE AGENT IN REFERENCE TO THIS.

6 THE COURT: IF IT'S JENCKS MATERIAL.

7 MR. DAVIS: THAT'S WHAT I'M THINKING IT IS, BECAUSE
8 SHE GAVE A STATEMENT--

9 MS. HAMILTON: YOU HAVE HER JENCKS MATERIAL, THE
10 GRAND JURY TRANSCRIPT.

11 MR. DAVIS: THAT'S THE ONLY THING?

12 MS. HAMILTON: THAT'S THE ONLY THING SHE'S SIGNED,
13 SEEN OR ADOPTED.

14 (BENCH CONFERENCE CONCLUDED.)

15 BY MS. HAMILTON:

16 Q. MS. FOSTER, THE PERSON YOU KNOW AS TUVAL, DO YOU SEE THAT
17 PERSON IN THE COURTROOM?

18 A. YES.

19 Q. PLEASE TELL THE JURY WHERE HE'S SEATED.

20 A. RIGHT DOWN THERE.

21 Q. YOU HAVE TO IDENTIFY HIM, MS. FOSTER.

22 A. HE HAS ON A RED SHIRT AND SOME BLUEJEANS.

23 MS. HAMILTON: IF THE COULD REFLECT SHE'S IDENTIFIED
24 THE DEFENDANT, YOUR HONOR.

25 THE COURT: YES, MA'AM.

1 A. YES, MA'AM.

2 Q. COULD YOU PLEASE IDENTIFY THAT PERSON?

3 A. TUVAL, RIGHT THERE IN THE RED SHIRT.

4 MS. HAMILTON: IF THE RECORD COULD REFLECT HE'S
5 IDENTIFIED THE DEFENDANT, TUVAL MCKOY.

6 THE COURT: YES, MA'AM.

7 BY MS. HAMILTON:

8 Q. MR. MCLEAN, WOULD YOU PLEASE TELL THE JURY ABOUT THAT?

9 A. YES, MA'AM. WELL, ON MARCH 16TH --

10 Q. SPEAK UP CLEARLY SO THE JURY CAN HEAR YOU.

11 A. WELL, MARCH 16TH, MY WIFE, PHYLLIS MCLEAN, WE HAD A
12 BREAK-IN IN OUR HOUSE, SO SHE WANTED -- SHE WAS GOING TO GET
13 SOME KIND OF PROTECTION. SHE KNEW A FRIEND NAMED PEACHES.
14 AND SO, WE MET HER AND TUVAL DOWN AT DAWN (PHONETIC) ROAD AT
15 THIS STORE AND GOT THE GUN, GOT OUT OF THE CAR.

16 Q. AND WHO DID YOU BUY THE GUN FROM?

17 A. TUVAL.

18 Q. HOW MUCH DID YOU PAY FOR THE GUN?

19 A. ABOUT 35 -- \$35.

20 MS. HAMILTON: I HAVE NOTHING FURTHER OF THIS
21 WITNESS, YOUR HONOR.

22 MR. DAVIS: YOUR HONOR, MAY WE APPROACH THE BENCH?

23 THE COURT: YES, SIR.

24 (BENCH CONFERENCE ON THE RECORD.)

25 MR. DAVIS: YOUR HONOR, I WANT TO GIVE HIM A COPY OF

4-W

ATTACHMENT --- PLEA HEARING ON PRIORS

CA 871-83

SUPREME COURT : QUEENS COUNTY

CRIMINAL TERM : PART C-4

Plea

-----X

THE PEOPLE OF THE STATE OF NEW YORK : Indictment 771-82
1640-83

-against- :

ALLEN MOSLEY, :

Defendant. :

-----X

THE PEOPLE OF THE STATE OF NEWYORK : Indictment 773-82
2334-83

-against- :

DAVID RICHBERG, :

Defendant. :

-----X

Criminal Courts Building
125-01 Queens Boulevard
Kew Gardens, New York
September 28, 1983

B e f o r e :

THE HON. LEROY B. KELLAM

Justice

Appearances:

For the People:

HON. JOHN J. SANTUCCI

District Attorney, Queens County

BY: STEPHEN FOYER

Assistant District Attorney

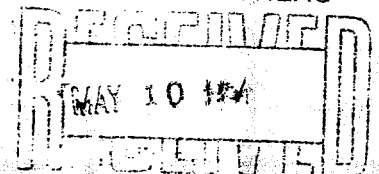
For the defendant Mosley:

ALFRED PILIERO, ESQ.

For the defendant Richberg:

FRANK LAND, ESQ.

APPEALS BUREAU



SUPREME COURT
QUEENS COUNTY

Leon Siegel
Official Court Reporter.

Colloquy

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THE CLERK: Indictments 771 of 1982 and 1640 of 1983. Allen Mosley. Alfred Piliero. Indictments 773 of 1982 and 2334 of 1983. David Richberg. Frank Land, counsel.

MR. PILIERO: May we approach, your Honor?

THE COURT: Yes.

(An off the record conference was had at the Bench between the Court, defense counsel and the Assistant District Attorney.)

THE COURT: Second call.

THE CLERK: Indictments 771 of 1982 and 1640 of 1983. Allen Mosley. Alfred Piliero, counsel. Indictments 773 of 1982 and 2334 of 1983. David Richberg. Frank Land, counsel.

Are you Allen Mosley?

DEFENDANT MOSLEY: Yes.

THE CLERK: Mr. Piliero is your attorney?

DEFENDANT MOSLEY: Yes

THE CLERK: Are you David Richberg?

DEFENDANT RICHBERG: Yes.

THE COURT: Mr. Land is your attorney?

DEFENDANT RICHBERG: Yes.

THE CLERK: Do you have an application?

Colloquy

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MR. LAND: At this time Mr. Richberg, after consultation with me and I may add deep consultation has authorized me to withdraw his previously entered plea of not guilty and enter a plea of guilty to 110 140.25 of the Penal Law which is a Class D Felony. He also authorized--

THE CLERK: May I interject? On what indictment?

MR. LAND: This is Indictment 773 of 1982.

THE COURT: That's attempt burglary two.

MR. LAND: Also pleading guilty to the indictment of bail jumping first degree which is on Indictment 2334 of 1983.

THE CLERK: Your Honor, is defense counsel withdrawing his outstanding motion?

MR. LAND: So done.

THE COURT: Motion withdrawn in 2334; also motion in the other case.

MR. LAND: There was motion on relative to suppression on 773 of 1982.

THE COURT: And you withdraw that motion?

MR. LAND: Withdraw that motion.

MR. PILIERO: Under Indictment 771 of 1982 the defendant had authorized me to withdraw his prior plea

Colloquy

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of not guilty and enter a plea of guilty to attempt burglary second degree, Class D felony, in full satisfaction of the indictment, and under 1640 of 1983 defendant has authorized me to withdraw his prior plea of not guilty on that case and enter a plea of guilty to attempted burglary second degree, Class D felony, to cover all the charges in that indictment.

THE COURT: Attempt burglary two, Class D.

First I'll take Mr. Allen Mosley and Mr. Richberg on Indictments Number 771 and 773 of 1982, respectively.

Mr. Allen Mosley?

DEFENDANT MOSLEY: Yes.

THE COURT: Did you hear what your lawyer, Mr. Piliero, said - that you wish to plead guilty to attempted burglary in the second degree?

DEFENDANT MOSLEY: Yes.

THE COURT: Is that what you wish to do?

DEFENDANT MOSLEY: Yes.

THE COURT: Now, Mr. Richberg, did you hear Mr. Land, your attorney, say that you wish to also plead guilty to attempted burglary second degree?

DEFENDANT RICHBERG: Yes.

Colloquy

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THE COURT: A D felony.

DEFENDANT RICHBERG: Yes.

THE COURT: And is that what you wish to do?

DEFENDANT RICHBERG: Yes.

THE COURT: Have each of you gentlemen discussed this matter in detail with your respective lawyers, the two lawyers here?

DEFENDANT MOSLEY: Yes.

DEFENDANT RICHBERG: Yes.

THE COURT: Do you each realize that you have a right, a constitutional right and statutory right, to a trial by a judge and a trial, or a trial by a jury, and if you plead guilty you waive that, give up your right to any trial whatsoever? Do you understand that?

DEFENDANT MOSLEY: Yes.

DEFENDANT RICHBERG: Yes.

THE COURT: And as you know the motions have been made with reference to the legality of the action allegedly taken by the People and those motions you had a right to be heard on and get a decision on and your lawyers are withdrawing those motions? Do you understand that?

DEFENDANT MOSLEY: Yes.

Colloquy

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DEFENDANT RICHBERG: Yes.

THE COURT: Do you realize that the People have the burden of proving your guilt beyond a reasonable doubt? Otherwise you should be found not guilty. Do you understand that?

DEFENDANT MOSLEY: Yes.

DEFENDANT RICHBERG: Yes.

THE COURT: Has anybody threatened either of you in any way to cause you to plead guilty? Either of your lawyers? Anyone in the District Attorney's Office or anyone else threaten you in any way to cause you to plead guilty?

DEFENDANT MOSLEY: No.

DEFENDANT RICHBERG: No.

THE COURT: Is it fair to say that as far as guilt is concerned you are pleading guilty because each of you are in fact guilty and for no other reason?

DEFENDANT MOSLEY: Yes.

DEFENDANT RICHBERG: Yes.

THE COURT: Each of you are offering to plead guilty to the charge of attempted burglary second degree because while you were acting in concert, that is, acting together, on or about March 3, 1982 you knowingly attempted to enter and remain unlaw-

Colloquy

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fully in the dwelling of Alma Johnson with intent to commit a crime in the dwelling? Mr. Mosley?

DEFENDANT MOSLEY: Yes.

THE COURT: Is that what you did?

DEFENDANT MOSLEY: Yes.

THE COURT: And Mr. Richberg?

DEFENDANT RICHBERG: Yes.

THE COURT: Where was that dwelling located?

DEFENDANT RICHBERG: On Yates Avenue.

THE COURT: Where is that?

DEFENDANT RICHBERG: Queens.

THE COURT: What was the crime that was intended to be committed in that building?

DEFENDANT MOSLEY: Attempt burglary.

THE COURT: What? Tell me in words, not using legal terms. What did you intend to do and do in the dwelling? What were you intending to go in there for?

DEFENDANT MOSLEY: A bike.

THE COURT: A bicycle you thought was in the building?

DEFENDANT MOSLEY: Yes.

THE COURT: Did it belong to you?

DEFENDANT MOSLEY: No.

Colloquy

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THE COURT: You knew you had no authority to go in there to get the bike or anything else? Is that right?

DEFENDANT MOSLEY: Yes.

THE COURT: What were you going in there for?

DEFENDANT RICHBERG: The same thing.

THE COURT: And you knew you had no authority?

DEFENDANT RICHBERG: Right.

MR. FOYER: I'd like to inquire of each. What did you want to do with the bike?

DEFENDANT MOSLEY: Keep it.

MR. FOYER: Did you want to remove the bike from the premises?

DEFENDANT MOSLEY: Yes.

DEFENDANT RICHBERG: Yes.

MR. FOYER: What type of building was this?

DEFENDANT MOSLEY: House.

DEFENDANT RICHBERG: House.

MR. FOYER: Private house?

DEFENDANT MOSLEY: Think so.

DEFENDANT RICHBERG: Apartment house.

MR. FOYER: Thank you, your Honor.

THE COURT: Now, were any promises made to either of you gentlemen other than I have had a

Colloquy

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conference with your lawyers and the District Attorney and I know that there's been plea negotiations with each of your lawyers and the District Attorney's Office and I have agreed to promise, based on your conferences and what they have discussed with each other and with the Court, to sentence each of you to one to three years in the New York State Department of Corrections on this plea. In addition to that, it is my understanding that there's one other for each of you, one other plea that each of you intends to take, and I intend to sentence you to one to three years on each of those, that is, each of you. However, both, or all of these will run concurrent with each other. In other words, each of you will have two felony convictions and sentence will be one to three concurrent.

Have any other promises been made to you? Do you understand? Mr. Richberg, you just pleaded guilty to attempted burglary second degree. You also intend to plead guilty to bail jumping first degree which is an E felony and that the sentence of the Court would be one to three in the first count and one to three in the second indictment, but they both will run together, concurrent with each other. Do you understand?

Colloquy

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DEFENDANT RICHBERG: Yes.

THE COURT: So the sentence will be two separate sentences and served at the same time. Do you understand that?

DEFENDANT RICHBERG: Yes.

THE COURT: That's the promise I made.

MR. LAND: I want to make a representation to this Court that we went through this in great detail inside.

THE COURT: Now, Mr. Mosley, you have a burglary and you are going to plead guilty to another burglary. That's my understanding. Do you understand that?

DEFENDANT MOSLEY: I understand that.

THE COURT: I had promised your lawyer that I would sentence you one to three years on the first one; that also I would sentence you to one to three years on the second one, and they will run concurrent, that is, each of those you will serve at the same time. Do you understand that?

DEFENDANT MOSLEU: I understand that, but the time I have been in here, would that count?

THE COURT: You get credit for time served.

MR. PILIERO: That was his concern. He has been in close to eight months. I have indicated to

Colloquy

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him any time he's done on these cases he will get credit.

THE COURT: He will get credit for time served on the two separate cases, yes. That's my understanding, but that's with him. My sentence is one to three and I am sure Corrections will work out the correct time.

All right. Knowing that, do you still want to plead guilty?

DEFENDANT MOSLEY: Yes.

THE COURT: How about you?

DEFENDANT RICHBERG: Yes.

THE COURT: Now, one other thing I must tell you. Now, each of you are pleading guilty to a felony conviction, which means that in the event that you are convicted hereafter of another felony that you will be facing more time, jail time, because you have these convictions. Do you understand that? More than you would have if you didn't have these convictions. You will be facing extra time because of these convictions. Do you understand that?

DEFENDANT RICHBERG: I understand.

DEFENDANT MOSLEY: Yes, but I have another

Colloquy

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case pending now. Will that be the same thing?

THE COURT: Any conviction that you have for a felony after this conviction will cause you to serve more time for that convictions.

MR. PILIERO: Here is the situation. Defendant has a matter pending downstairs involving an ex-girl friend. The People have not been ready. It will be dismissed. I am telling him that has no status as predicate felony on any case.

THE COURT: That's not the question he asked me. He asked me would another felony if it's pending now - would that effect that, and it is my answer that any felony that he is convicted of after this will be--

MR. LAND: It occurred before. I want to add one other factor which was not discussed prior but I think I should. They both have a right to ask for youthful offender treatment. It wasn't discussed one way or another but I will on the sentence.

THE COURT: Don't confuse us with YO now. If this happened before, it was already there. It would not serve as predicate felony.

MR. PILIERO: Your Honor, it's my understanding.

Colloquy

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MR. FOYER: Your Honor, this is a negotiated plea and the People are not offering YO at this time.

MR. LAND: I understand.

THE COURT: I am not promising YO. Don't confuse it with YO. I am not promising YO. Do you understand that?

DEFENDANT MOSLEY: I understand. May I say something?

THE COURT: Yes, you have a right.

DEFENDANT MOSLEY: My mother was here and I think if she'd find out I am pleading guilty she'd feel upset and I want to speak to you.

MR. LAND: He wants jail visit with girl friend.

MR. PILIERO: If it's possible. I explained to him it's very difficult with security problems.

THE COURT: Let's keep this with the plea. Does this affect the plea?

DEFENDANT MOSLEY: I wanted my mother to be here but she left and she finds out I am pleading guilty - she's one who stayed and I wanted five minutes to explain something of that nature.

THE COURT: Sir, I can not, because of security

Colloquy

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reasons, authorize any visit. No. You can certainly visit at the House of Detention.

DEFENDANT MOSLEY: That's why I'm trying to get this done earlier.

THE COURT: Sir, the answer is no. Now, do you wish to plead guilty or not?

DEFENDANT MOSLEY: Yes.

THE COURT: Plea is acceptable. Do you have any questions?

MR. FOYER: No, your Honor.

THE CLERK: Do you wish me to take this pedigree on these now or wait and take it all later after the other two?

THE COURT: I am going to take the other two right now.

MR. LAND: I'm ready on the bail jumping.

THE COURT: Mr. Richberg, you have indicated you wish to plead guilty to bail jumping first degree?

DEFENDANT RICHBERG: Right.

THE COURT: That's Indictment 2334 of 1983, and is that what you still wish to do?

DEFENDANT RICHBERG: Yes.

THE COURT: Are you pleading guilty because

Colloquy

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on or about March 16, 1983 in the County of Queens after having been released by court order from custody and allowed to remain at liberty on condition that you'd subsequently appear personally in connection with a charge against you of committing the felony of attempted robbery in the first degree that you failed to appear personally on the required date of March 23, 1983, in Part 3A in the Queens Criminal Court, and voluntarily within thirty days thereafter you still failed to appear?

DEFENDANT RICHBERG: Right.

THE COURT: Is that what you want to plead guilty to?

DEFENDANT RICHBERG: Yes.

THE COURT: And are you pleading guilty because you are guilty and for no other reason?

DEFENDANT RICHBERG: Yes.

THE COURT: You have discussed that matter with your lawyer?

DEFENDANT RICHBERG: Yes.

THE COURT: And you know that you have given up all the rights under this indictment as trial as you did the other indictment?

DEFENDANT RICHBERG: Yes.

Colloquy

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THE COURT: And promises are the same I just told you about? Understand that?

DEFENDANT RICHBERG: Yes.

MR. FOYER: One question. You were returned on April 25?

MR. LAND: Arrested April 25, 1983.

DEFENDANT RICHBERG: Yes.

MR. FOYER: Was it more than thirty days had expired?

DEFENDANT RICHBERG: Yes.

MR. FOYER: Thank you.

MR. LAND: Also for the record, that case was dismissed, the original charge. The basic original charge. It's nothing to do with it - just interesting that it happened that way.

THE COURT: Do you wish to plead guilty to that charge?

DEFENDANT RICHBERG: Yes.

THE COURT: Now, Mr. Mosley, are you wishing to plead guilty to attempt burglary in the second degree in that while you were acting on concert with another person on or about April 21, 1983 you knowingly attempted to enter and remain unlawfully in the dwelling of Raphael Callwood with intent to commit a

Colloquy

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crime therein? Is that true?

DEFENDANT MOSLEY: Yes.

THE COURT: Where'd that happen?

DEFENDANT MOSLEY: Luckar Street.

THE COURT: Queens County?

DEFENDANT MOSLEY: Yes.

THE COURT: What did you intend to do in that dwelling?

DEFENDANT MOSLEY: Me and somebody else trying to remove a bike.

THE COURT: From inside the dwelling?

DEFENDANT MOSLEY: Yes.

THE COURT: Did you have any authority to go in the dwelling or remove bike?

DEFENDANT MOSLEY: No.

THE COURT: Were you goint to steal bike from someone?

DEFENDANT MOSLEY: I was going to take the bike.

THE COURT: You didn't have authority to take it?

DEFENDANT MOSLEY: No.

THE COURT: Wouldn't that be stealing?

DEFENDANT MOSLEY: It would be stealing, yes.

Colloquy

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THE COURT: You knew that that was an unlawful act?

DEFENDANT MOSLEY: Yes.

MR. FOYER: What type of premises was this? Apartment building? House?

DEFENDANT MOSLEY: House.

MR. FOYER: Single family?

DEFENDANT MOSLEY: Don't know if single family.

THE COURT: The plea is acceptable to the Court.

THE CLERK: Each defendant, you are advised under existing law prior felony conviction may serve to increase the punishment for the felonies of which you now stand convicted. Both of you are further advised under Indictment 2334 of 1983 as regards David Richberg, and 1640 of 1983 as to Allen Mosley, pursuant to penal Law Section 60135 there is a maddatory penalty surcharge in the amount of \$75 or in lieu thereof an additional period of incarceration of one year. Your attorneys will explain both these respective statements to you.

(Each defendant was duly sworn by the Clerk and the pedigree of each was recorded.)

MR. FOYER: Under Indictment 1640 of 1983

4-y

ATTACHMENT --- PSI page # 7

JOHN DOE

Page 7

The FBI report showed the defendant was convicted upon a plea of guilty. Records show he was originally arrested and charged with Burglary/Illegal Entry of a Dwelling, Grand Larceny, Possession of Stolen Property, and Criminal Misconduct with Intent to Damage. He pled guilty to Criminal Trespass/3rd degree misdemeanor and was sentenced to time served. A bench warrant had been issued for the defendant on March 31, 1982 and was executed on April 23, 1982. A period of seven (7) days passed before the sentence was imposed.

11. 03/03/82 Attempted Burglary, 10/24/83: 1 to 3 years. 4A1.1(a) 3
 (Age 17) 2nd degree, Superior
 Court, Queens, NY,
 Indictment #771-82.

The FBI report showed the defendant was originally arrested and charged with Burglary/Illegal Entry of a Dwelling, Attempt Burglary/3rd degree, Criminal Possession of Stolen Property Valued, Criminal Trespass/3rd degree, and Attempt Criminal Trespass/3rd degree. A bench warrant issued on July 25, 1983 was vacated. He was convicted of a class D felony as stated above and committed to Elmira Correctional Facility on November 1, 1983 and paroled on November 26, 1984. He was discharged from parole supervision effective November 26, 1985.

12. 04/21/83 Attempted Burglary, 10/24/83: 1 to 3 years. 4A1.1 (a) 3
 (Age 18) 2nd degree, Superior
 Court, Queens, NY,
 Indictment #1640-83.

The FBI report revealed the defendant was originally arrested and charged with Burglary/Illegal Entry of a Dwelling and Possession of Stolen Property. He pled guilty to the above Class D felony and once he was returned on a warrant effective July 26, 1983, he was sentenced in October 1983 to 1 to 3 years. He was paroled on this sentence effective November 26, 1984 and was discharged from parole supervision on November 26, 1985.

13. 09/23/86 Unlawful Possession 09/23/86: \$75 fine. 4A1.1(c) 1
 (Age 21) of Marijuana,
 Criminal Court,
 Queens, NY,
 #6Q028285.

The FBI record check revealed on September 23, 1986, the defendant was arrested and charged with Robbery/2nd degree and Unlawful Possession of Marijuana. He entered a plea of guilty to the latter and was found guilty of the drug related offense. Records further indicate that the fine was paid.

ATTACHMENT --- CLERKS RECORD

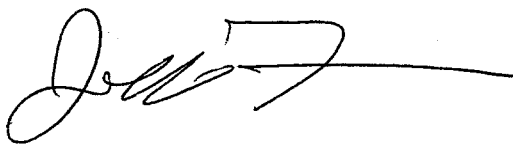
United States District Court
Eastern District of North Carolina

To The Clerk of Courts.

CRIMINAL NO. 93-10207-
CIVIL NO. 5: 97-CV-302

My NAME IS ALAN MORSELEY #14718056,
I'm currently being held at LEWISBURG FEDERAL PRISON.
I wish to MAKE A RECORD OF THE FACT THAT THE PRISON
IS, AND HAS BEEN ON EMERGENCY LOCK DOWN SINCE
Aug 28, 1997,

I ASK THAT THIS BE TAKEN INTO ACCOUNT
FOR MY DELAY IN RESPONSE, AS WELL AS
THE QUALITY OF MY MOTIONS



Sincerely

Alan Morseley
Alan Morseley

Notarial Seal
Jeffrey E. Fromm, Notary Public
Lewisburg Boro, Union County
My Commission Expires Jan. 29, 2001